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# Gregory's Revisal Biennial 1915 *of* North Carolina

Containing Annotations  
to the Revisal of 1905 collected since  
the publication of Gregory's Supplement 1913,  
all Amendments to the Revisal of 1905  
and all Laws of a general and  
permanent nature, passed  
at the Session of 1915  
and notes to the  
Constitution of North Carolina

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# PREFACE

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This work is intended to supplement Gregory's Supplement, 1913, to Pell's Revisal, and to place in readily accessible form all the general and permanent Laws of the General Assembly of 1915, together with the recent decisions of the courts construing sections of the Revisal and subsequent general legislation.

The sections of the Revisal are arranged herein consecutively. Those sections which have not been changed by the General Assembly, 1915, and relating to which there are no new notes, are omitted entirely, and those sections which have not been amended or repealed, but which are herein annotated, appear only by number followed by notes relating thereto.

Many of the following pages are of course mere copy of the Laws of 1915; but it is believed that the Bench and the Bar will find this work possesses the following advantages over the official edition of the acts:

1. The sections of the Revisal amended or repealed are arranged consecutively, are therefore readily accessible, and reliance upon an index is avoided.

2. Amended sections, both of the Revisal and subsequent laws, are published *in full as amended*, the changes being incorporated in the text.

3. Here are collected decisions, both State and Federal, construing the sections of the Revisal and the subsequent legislation, compiled in Gregory's Supplement, 1913, together with notes and cross references.

The annotations of the statutes begin where those of the Supplement, 1913, leave off, and are taken from North Carolina Reports, 162 to 167, both inclusive; U. S. Supreme Court Reports, 226 to 235, both inclusive, and Federal Reports, 204 to 219, both inclusive.

An examination of the table of contents will be helpful to a clear understanding of the plan and arrangement of the work.

The Editor would appreciate any suggestions as to the perfection of future editions of these works, and would welcome information of any errors or imperfections detected either in this work or in Gregory's Supplement.

EDWIN C. GREGORY.

SALISBURY, N. C., Sept. 15, 1915.





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# TABLE

SHOWING A CONSECUTIVE LIST OF ALL THE LAWS OF A GENERAL AND PERMANENT NATURE PASSED AT THE SESSION OF 1915, NOT IN TERMS AMENDATORY OF THE REVISAL OF 1905, OR OF PELL'S REVISAL OF 1908, OR GREGORY'S SUPPLEMENT, 1913, WITH REFERENCE TO THE SECTION NUMBERS UNDER WHICH THEY ARE PLACED IN THIS WORK.

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# NOTES to RULES of PRACTICE IN THE SUPREME COURT OF NORTH CAROLINA

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(These notes are not exhaustive and are intended to give only the leading decisions upon the rules annotated.)

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## Sup. Ct. Rule 5.

When an appellant has failed to file his transcript in the Supreme Court by Tuesday preceding the week of the call of his district, and the appeal has been dismissed (Rule 17), his motion to reinstate (Rule 18) will be denied. *Hawkins v. Telegraph Co.*, 166 N. C. 213, 81 S. E. 161.

## Sup. Ct. Rule 19.

It is not required that an exception to the direction of a verdict by the court upon the evidence should conform to the particulars of Rules 19 and 34 of the Supreme Court regulating appeals. *Wynn v. Grant*, 166 N. C. 39, 81 S. E. 949.

2. Just what will constitute a sufficiently specific assignment must depend upon the special circumstances of the particular case; but always the very error relied upon should be definitely and clearly presented, and the court not compelled to go beyond the assignment itself to learn what the question is. The assignment must be so specific that the court is given some real aid, and a voyage of discovery through an often voluminous record not rendered necessary. *Porter v. Lumber Co.*, 164 N. C. 396, 80 S. E. 443.

These rules refer to exceptions which have been properly assigned for error, in accordance with Rule 27 and Revisal, 561, and the proper observance of all of them is required for the orderly and efficient disposition of causes on appeal. These rules are not complied with by making a short excerpt from the stenographer's notes, incomplete in themselves and giving no indication of their real bearing upon the question involved. *Porter v. Lumber Co.*, 164 N. C. 396, 80 S. E. 443.

## Sup. Ct. Rule 27.

Assignment of error must point out concisely the substance of the rulings on the trial excepted to, or they will be disregarded on appeal. *Haddock v. Stocks*, 167 N. C. 70, 83 S. E. 9.

The assignments of error on appeal should indicate the ground of the exceptions relied upon with such definiteness and particularity that the court may examine into them without having to search the record to ascertain where and what they are; and the rule as to such assignments may not be waived by parties without the consent of the court. *Spruce Co. v. Hunnicutt*, 166 N. C. 202, 81 S. E. 1079.

An exception that the trial court did not restrict the evidence of the record of a former action between the same parties, and that it may

have been considered by the jury as substantive evidence, may not be sustained on appeal, where the defendant has not aptly requested the judge to so restrict it in accordance with this rule. *Owenby v. R. R.*, 165 N. C. 641, 81 S. E. 997.

### Sup. Ct. Rule 31.

Where the defendant is the successful party on appeal, and on his motion to retax costs in the Supreme Court it appears that there was no unnecessary or superfluous matter in the transcript, and the allowance specifically made in this rule was not sufficient to pay for the cost of printing, which is not denied by the other party, it presents a proper instance for the court to specially order that the full cost of printing the transcript be taxed against the plaintiff and the surety on his prosecution bond. *Hardy v. Insurance Co.*, 167 N. C. 569, 83 S. E. 801.

### Sup. Ct. Rule 34.

Assignments of error not mentioned and discussed in the brief of appellant are taken as abandoned on appeal under the rule, and it is pointed out by the court that upon mature consideration of counsel in making their briefs it is well for them not to set out useless assignments, so that the attention of the court may be given to the material propositions of the law presented in the appeal. *Tilghman v. R. R.*, 167 N. C. 163, 83 S. E. 315, 1090.

An exception not appearing in appellant's brief is considered as abandoned in the Supreme Court. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.

Mere reference in the brief to exceptions of record without argument or citation of authority, is not a compliance with Rule 34, Supreme Court, which requires that authority or reason be given to support the exceptions, or they will be considered as abandoned. *Ingle v. R. R.*, 167 N. C. 636, 83 S. E. 744; *Lloyd v. R. R.*, 166 N. C. 24, 81 S. E. 1003.

Statements made in appellant's brief, that he has ten assignments of error and insists upon them all, do not come within this rule, and will not be considered. *Watkins v. Lawson*, 166 N. C. 216, 81 S. E. 623.

Where error is assigned on appeal as to admissibility of evidence, referring to the page of record, or to the charge of the court, referring only to appellant's certain numbered exception, it does not come within the requirements of the rule, and will not be considered. *Carter v. Reaves*, 167 N. C. 131, 83 S. E. 248.

In this case it was held that if it were erroneous on the trial for the judge to confine the admissibility of certain evidence to the purposes of impeachment, the distinction is too slight to be the ground for a new trial. *Medlin v. Board of Education*, 167 N. C. 239, 83 S. E. 483.

It is not required that an exception to the direction of a verdict by the court upon the evidence should conform to the particulars of Rules 19 and 34. *Wynn v. Grant*, 165 N. C. 39, 81 S. E. 949.



# Notes to the Constitution

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(Through 167 N. C., 235 U. S., 219 Fed. Rep.)

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## Article I.

5. Cited but not construed in *S. v. Fisher*, 162 N. C. 550, 77 S. E. 121.
7. Under the decisions of this court franchises to public service corporations come directly within the words and meaning of the exception in this section. *Reid v. R. R.*, 162 N. C. 355, 78 S. E. 306.  
For additional notes on this section see Supplement 1913.
11. It would be a violation of his constitutional rights to charge defendant with the commission of one crime and convict him of a different one. *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.  
A defendant is entitled in law to hear the particular accusation against him; to have the prosecution restricted to that accusation, and consequently the proof, and not to be convicted of any other offense than the one specially charged in the indictment. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.  
For additional notes on this section see Supplement 1913.
12. For notes on this section see Supplement 1913.
13. A jury signifies twelve men duly impaneled in the cause to be tried. *S. v. Rogers*, 162 N. C. 656, 78 S. E. 293.  
A trial by a jury of twelve men cannot be waived by the accused in a criminal action. *S. v. Rogers*, 162 N. C. 656, 78 S. E. 293.  
The Legislature may prescribe different punishments for the same offences, in different counties, and it may reduce the punishment for all offences so as to make them misdemeanors; but when the punishment has fixed the grade of the offence, it may not be altered by the name given it in the statute. *S. v. Hyman*, 164 N. C. 411, 79 S. E. 284.  
Where an appeal from a recorder's court is provided by statute, a trial jury is afforded the accused in the Superior Court, and hence he is not deprived of this, his constitutional right. *S. v. Hyman*, 164 N. C. 411, 79 S. E. 284.  
For additional notes on this section see Supplement 1913.

14.

For notes on this section see Supplement 1913.

15.

Judicial warrants, general in terms and unsupported by preliminary oath or sworn evidence and for conduct not committed in the immediate presence of the magistrate, are forbidden by the Federal Constitution, Amendment IV, and by this section. *Brewer v. Wynne*, 163 N. C. 319, 79 S. E. 629.

16.

For notes on this section see Supplement 1913.

17.

We should not impute to the Legislature an intention to do injustice by depriving a person of his property without due notice. The fact that he is allowed thirty days to make his claim implies that he should have such notice, as otherwise he could never avail himself of this provision of the law. *Luther v. Commissioners*, 164 N. C. 241, 80 S. E. 386.

Property taken for a public school is taken for a public use within the meaning of the constitution. *School Trustees v. Hinton*, 165 N. C. 12, 80 S. E. 890.

Permanent damage to land of a riparian owner on a stream, below the place where the sewage from a city is emptied is a taking or appropriation by the city which entitles such owner to damages. *Donnell v. Greensboro*, 164 N. C. 330, 80 S. E. 377.

See *Rhodes v. Durham*, 165 N. C. 679, 81 S. E. 938, as to damages awarded riparian owner for injury caused by emptying sewage in stream.

For additional notes on this section see Supplement 1913.

18.

For notes on this section see Supplement 1913.

21.

For notes on this section see Supplement 1913.

32.

Where the defendant has been found with sufficient quantity of intoxicating liquor in his possession to make out a *prima facie* case of the violation of chapter 44, Laws 1913 (sec. 2080b), fourteen days after the statute had become effective, he may not successfully resist conviction on the ground that the law was *ex post facto*, as to his case, having had ample time to rid himself of the possession of the liquor after the operative effect of the statute. *S. v. Denton*, 164 N. C. 530, 80 S. E. 401.

For additional notes on this section see Supplement 1913.

## Article II.

1.

For notes on this section see Supplement 1913.

10.

The only limitation on powers of the Legislature in enacting statutes relating to divorce is found in this section. *Cooke v. Cooke*, 164 N. C. 272, 80 S. E. 178.



## 14.

The Journal must show who voted for the bill, and that the requisite number of senators and members did so; no other source of evidence can be invoked. *Burlingham v. City of New Bern* (Dis. Ct.), 213 Fed. 1014.

The certificates of the presiding officers of the two houses that a bill has been read three several times in each house does not obviate the necessity of examining the Journal for the purpose of ascertaining whether the requirements of this section have been complied with. *Burlingham v. City of New Bern* (Dis. Ct.), 213 Fed. 1014.

Where the requirements of this section have not been met, no vote of approval of a proposition to issue bonds under the act passed will impart any validity to the bonds issued pursuant thereto. *Burlingham v. City of New Bern* (Dis. Ct.), 213 Fed. 1014.

An act empowering special school districts to issue bonds was passed by the House in accordance with this section; in the Senate it was amended so as to apply to one district only. This amendment was concurred in by the House without an "aye" and "no" vote. *Held*: The act is valid as to that district. *Gregg v. Commissioners*, 162 N. C. 479, 78 S. E. 301.

When an act has been passed in accordance with this section, an amendment which does not increase the amount of the bonds or tax to be levied, or otherwise materially change the original bill, may be adopted by the concurrence of both houses of the General Assembly. *Gregg v. Commissioners*, 162 N. C. 479, 78 S. E. 301.

The principles laid down in *Gregg v. Commissioners*, 162 N. C. 484, are affirmed in *LeRoy v. Elizabeth City*, 166 N. C. 93, 81 S. E. 1072.

For notes on this section see Supplement 1913.

## Article III.

## 10.

1. Constitutional offices must be filled in the mode designated in the Constitution.

2. Under the amended Constitution of 1875, the Legislature may provide for the filling of any office created by statute. *Salisbury v. Croom*, 167 N. C. 223, 83 S. E. 354.

## 16.

For notes on this section see Supplement 1913.

## Article IV.

## 1.

For notes on this section see Supplement 1913.

## 7.

A statute which attempts to confer on a justice of the peace final jurisdiction where the punishment prescribed therein exceeds the constitutional limitation, is inoperative as to the magistrate's jurisdiction, except to bind over to the Superior Court, which may only try the case upon a bill of indictment. *S. v. McAden*, 162 N. C. 575, 77 S. E. 298.

A punishment prescribed of a fine not exceeding \$50 or imprisonment not exceeding twenty days, "or both," by the words "or both" takes away the final jurisdiction of a justice of the peace, and on appeal

therefrom the motion of the defendant to quash should be granted in the Superior Court. *S. v. McAden*, 162 N. C. 575, 77 S. E. 298.

8.

In this case the court expressed its disapprobation of the remark of the court that the counsel had "testified when he was not sworn," holding it to be a reflection upon the counsel. *State v. Lee*, 166 N. C. 250, 80 S. E. 977.

Where in *habeas corpus* proceedings an adverse judgment presents questions of law or legal inference and amounts to the denial of a legal right it may be reviewed on *certiorari* under and by virtue of this section. In the matter of *Wiggins*, 165 N. C. 457, 81 S. E. 626.

Under this section the Supreme Court may require the lower court to refrain from changing the custody of the child in *habeas corpus* proceedings pending an appeal, or from permitting it to be carried out of the state. *Page v. Page*, 166 N. C. 90, 81 S. E. 1060.

We can review by appeal "any decision of the courts below upon any matter of law or legal inference," but in jury trials, at least, our jurisdiction ends when that is done. We cannot review findings of fact in such cases. *Johnson v. R. R.*, 163 N. C. 431, 79 S. E. 690; *Pender v. Insurance Co.*, 163 N. C. 98, 79 S. E. 293.

A consent judgment entered against a husband, subjecting his lands to the payment of the amount thereof, will pass his homestead interest in the lands thus set apart without the joinder therein of the wife; for the wife's joinder is not required unless there is a judgment docketed and in force, which is a lien upon the land, or unless the homestead has actually been set apart. *Simmons v. McCullen*, 163 N. C. 409, 79 S. E. 625.

Cited but not construed in *Mott v. R. R.*, 164 N. C. 367, 79 S. E. 867.

For additional notes on this section see Supplement 1913.

12.

For notes on this section see Supplement 1913.

13.

A trial by a jury of twelve men cannot be waived by the accused in a criminal action. *S. v. Rogers*, 162 N. C. 656, 78 S. E. 293.

14.

For notes on this section see Supplement 1913.

27.

For notes on this section see Supplement 1913.

## Article V.

1.

For additional notes on this section see Supplement 1913.

3.

A peddler is engaged in a trade within the meaning of the Constitution. *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168.

Section 44 of the revenue act of 1913 (sec. 5105d(44)) is not in conflict with this section. *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168.

For an extended discussion of the power of the General Assembly in the taxation of trades, see *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168.

For additional notes on this section see Supplement 1913.



5. The term "Municipal Corporation" as used in this section, from the context and its primary significance, evidently refers to municipal corporations proper, as cities and towns, etc., and to those public *quasi* corporations, such as counties, townships, etc., in which the inhabitants of designated portions of the State's territory are incorporated for the purpose of exercising certain governmental powers for the public benefit. *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18.

A corporation which, however high its aim and purpose, is, in its form and controlling features, a business enterprise, and on which municipal powers have been incidentally conferred in promotion of the primary purpose, is not a municipal corporation within the meaning of this section. *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18.

For additional notes on this section see Supplement 1913.

6. For notes on this section see Supplement 1913.

## Article VI.

1. For notes on this section see Supplement 1913.
7. The Constitution recognizes the clear distinction between "offices" and "places of trust or profit" (Art. XIV, sec. 7). *S. v. Bateman*, 162 N. C. 588, 77 S. E. 768.

The difference between an "assurance" and a "qualification" discussed by Clark, C. J., in *S. v. Bateman*, 162 N. C. 588, 77 S. E. 768.

A provision that a recorder shall be a "voter and a man of good moral character and a licensed attorney at law" is in controvention of this section. *S. v. Bateman*, 162 N. C. 588, 77 S. E. 768.

## Article VII.

1. For additional notes on this section see Supplement 1913.
2. See notes to Sec. 7 of this Article.  
For additional notes on this section see Supplement 1913.

7. In matters purely governmental in character the municipality is under the absolute control of the legislative power, but as to its private or proprietary functions the Legislature is under the same constitutional restraints that are placed upon it in respect of private corporations. *Asbury v. Albemarle*, 162 N. C. 247, 78 S. E. 146; *Sewerage Co. v. Monroe*, 162 N. C. 275, 78 S. E. 151.

The phrase "majority of the qualified voters therein" means a majority of all the persons who are duly qualified to vote in a given district or township, etc. *Sprague v. Commissioners*, 165 N. C. 603, 81 S. E. 915.

The General Assembly has the power to authorize a municipal corporation to create a debt and issue bonds for necessary expenses without a vote of the people. *LeRoy v. Elizabeth City*, 166 N. C. 93, 81 S. E. 1072.

The erection of new school buildings is not a necessary municipal expense within the meaning of this section. *Sprague v. Commissioners*, 165 N. C. 603, 81 S. E. 915.



Under Article VII, secs. 2 and 14, the Legislature may create a public road commission of a county and invest these commissioners with the same powers conferred on the county commissioners with reference to pledging the faith and credit of the county for public road purposes which are conferred on the county commissioners by this section. *Commissioners v. Commissioners*, 165 N. C. 632, 81 S. E. 1001.

An analysis of the stomach of a person who died under circumstances that might excite suspicion of foul play, made by the order of the judge of the Superior Court, is a necessary county expense. *Withers v. Commissioners*, 163 N. C. 341, 79 S. E. 615.

See notes to Section 2974.

For additional notes on this section see Supplement 1913.

9.

For notes on this section see Supplement 1913.

13.

For notes on this section see Supplement 1913.

14.

See notes to Section 7 of this Article.

For additional notes on this section see Supplement 1913.

### Article VIII.

1.

The grantees of *quasi*-public charters and their stockholders take and hold them subject to the provisions of this section and of Sec. 7, Art. I, of the Constitution. *Reid v. R. R.*, 162 N. C. 355, 78 S. E. 306.

This provision in our Constitution fixes every corporation taking out a charter since 1868 with notice that the State has the right to repeal or alter such charter at will. *R. R. v. Oates*, 164 N. C. 167, 80 S. E. 398.

4.

For notes on this section see Supplement 1913.

### Article IX.

1.

Property taken for public schools is taken for a public use within the meaning of this section. *School Trustees v. Hinton*, 165 N. C. 12, 80 S. E. 890.

Under this section higher education is to be encouraged as necessary to good government and the happiness of mankind. *Commissioners v. Board of Education*, 163 N. C. 404, 79 S. E. 886.

2.

This section was sufficient authority for the Legislature for the enactment of Section 4086 of the Revisal, declaring who shall be considered a white child when there is an admixture of negro blood. *Johnson v. Board of Education*, 166 N. C. 468, 82 S. E. 832.

For additional notes on this section see Supplement 1913.

9.

Cited but not construed in *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430.

10.

Cited but not construed in *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430.

**Article X.**

1. For notes on this section see Supplement 1913.
2. For notes on this section see Supplement 1913.
5. For notes on this section see Supplement 1913.
6. Section 952 of the Revisal is not in conflict with this section. Jackson v. Beard, 162 N. C. 105, 78 S. E. 6.  
The estate by entireties has not been impaired by this section. McKinnon v. Caulk, 167 N. C. 411, 83 S. E. 559.  
For additional notes on this section see Supplement 1913.
8. For notes on this section see Supplement 1913.

**Article XI.**

1. This constitutional provision has no direct application to the discipline required in our jails and penitentiaries, for if so it would prevent solitary confinement, restriction of rations, and other reasonable punishments that are in customary use in prisons and penitentiaries. State v. Nipper, 166 N. C. 272, 81 S. E. 164.
4. For notes on this section see Supplement 1913.

**Article XIV.**

4. Cited but not construed in Mfg. Co. v. Andrews, 165 N. C. 285, 81 S. E. 418.  
For additional notes on this section see Supplement 1913.
7. The Constitution recognizes the clear distinction between "offices" (Art. VI, Sec. 7) and "places of trust and profit." S. v. Bateman, 162 N. C. 588, 77 S. E. 768.  
Where one holding an "office or place of profit" accepts another such office or position in contravention of this section, of the Constitution, the first is vacated *eo instanti*, and any further acts done by him in connection with the first office are void. Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976.  
For additional notes on this section see Supplement 1913.
8. For a discussion of this section, see Johnson v. Board of Education, 166 N. C. 468, 82 S. E. 832.  
For additional notes on this section see Supplement 1913.





# Gregory's Revisal Biennial 1915 *of* North Carolina

Containing Annotations  
to the Revisal of 1905 collected since  
the publication of Gregory's Supplement 1913,  
all Amendments to the Revisal of 1905  
and all Laws of a general and  
permanent nature, passed  
at the Session of  
1915

3.

When an appointment has been made and entered of record, irregularities in taking bond, and in the performance of other duties required of the clerk, do not invalidate the appointment. *Dallago v. R. R.*, 165 N. C. 269, 81 S. E. 318.

For additional notes on this section see Supplement 1913.

4.

The right of action for wrongful death is not a part of the personal estate of a wife, and though it cannot be disposed of by her will, she does not die "partially intestate" as to the same so as to permit the husband to qualify as her administrator under this section. *Hood v. Telegraph Co.*, 162 N. C. 92, 77 S. E. 1094.

5.

2. For notes on this section see Supplement 1913.

16.

For notes on this section see Supplement 1913.

18.

For notes on this section see Supplement 1913.

19.

For notes on this section see Supplement 1913.

20.

For notes on this section see Supplement 1913.

21.

For notes on this section see Supplement 1913.

26.

Passing upon the question of issuing the letters is a judicial act, while making up of the record is a ministerial one, furnishing evidence of the appointment. *Dallago v. R. R.*, 165 N. C. 269, 81 S. E. 318.

27.

For notes on this section see Supplement 1913.

28.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

29.

Cited but not construed in *Dallago v. R. R.*, 165 N. C. 269, 81 S. E. 318.

35.

For notes on this section see Supplement 1913.

38.

For notes on this section see Supplement 1913.

59.

The right of action for wrongful death does not belong to the deceased, and the recovery is not assets in the usual acceptation of the



term. *Broadnax v. Broadnax*, 160 N. C. 432, 76 S. E. 216; *Hood v. Telegraph Co.*, 162 N. C. 92, 77 S. E. 1094.

The right of action hereunder is only given to the representative of the deceased, and hence a husband may not recover damages therefor, in his action against the defendant, in aggravation of damages caused by the defendant's tortious acts while trespassing on his lands. *Hood v. Telegraph Co.*, 162 N. C. 70, 77 S. E. 1096.

The husband of deceased who left a will disposing of all her property and naming another as executor, may not qualify as her administrator upon the theory that his wife could not dispose of the damages for her wrongful death and had died partially intestate as to such damages, and as such maintain an action to recover them. *Hood v. Telegraph Co.*, 162 N. C. 92, 77 S. E. 1094.

A deposition taken in an action for personal injuries is admissible in evidence in a subsequent action by the administrator against the same defendant to recover damages for wrongful death, caused by such injuries. *Hartis v. Electric Railway Co.*, 162 N. C. 236, 78 S. E. 164.

The right of action given for the wrongful death of the intestate is given by statute to his administrator, and the statute of limitations does not begin to run against such cause of action until the death of the intestate, caused by personal injury, has resulted. *Causey v. R. R.*, 166 N. C. 5, 81 S. E. 917.

The rule established by our decisions for the admeasurement of the damages for this kind of an injury, is "the present net value of the life which has been wrongfully taken." *Lynch v. Manufacturing Co.*, 167 N. C. 98, 83 S. E. 6.

An instruction that the jury should "take all the evidence and say about what her earnings would have been during the balance of her life, about how long she would have lived," is erroneous. *Lynch v. Manufacturing Co.*, 167 N. C. 98, 83 S. E. 6.

Evidence touching the number and ages of the intestate's children, is incompetent. *Lynch v. Manufacturing Co.*, 167 N. C. 98, 83 S. E. 6.

Cited but not construed in *Dockery v. Hamlet*, 162 N. C. 118, 78 S. E. 13.

For case, tried under Federal Employers' Liability Act, see *Myers v. R. R.*, 162 N. C. 343, 78 S. E. 280; *Horton v. R. R.*, 162 N. C. 424, 78 S. E. 494; *Lloyd v. R. R.*, 162 N. C. 485, 78 S. E. 489; *Burnett v. R. R.*, 163 N. C. 186, 79 S. E. 414; *Irvin v. R. R.*, 164 N. C. 5, 80 S. E. 78; *Dooley v. R. R.*, 163 N. C. 454, 79 S. E. 970; *Kenney v. R. R.*, 165 N. C. 99, 80 S. E. 1078; *Lloyd v. R. R.*, 166 N. C. 24, 87 S. E. 1003; *Saunders v. R. R.*, 167 N. C. 375, 83 S. E. 573; *Gray v. R. R.*, 167 N. C. 433, 83 S. E. 849; *Tilgham v. R. R.*, 167 N. C. 163, 83 S. E. 315, 1090.

For additional notes on this section see Supplement 1913.

60.

For notes on this section see Supplement 1913.

68.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

69.

Discussed by Walker, J. in *Speed v. Perry*, 167 N. C. 122, 83 S. E. 176.



70.

It seems that a deed under this section is sufficient on the record, to advise any intending purchaser of the grantee's interest. *Gilbert v. Hopkins* (C. C. A.), 204 Fed. 196.

Discussed by Walker, J. in *Speed v. Perry*, 167 N. C. 122, 83 S. E. 176. For additional notes on this section see Supplement 1913.

71.

Discussed by Walker, J. in *Speed v. Perry*, 167 N. C. 122, 83 S. E. 176.

72.

The executor's right to sue for the purpose of setting aside his testator's deed for fraud, undue influence, or to attack it for lack of a sufficient description of the land, does not exist, except under special circumstances, when the right, for instance, is derived from the will, or it is necessary to do so to provide a fund for the payment of the decedent's debts. *Speed v. Perry*, 167 N. C. 122, 83 S. E. 176.

74.

For notes on this section see Supplement 1913.

75.

See notes to Section 406 as to appointment, etc., of guardian *ad litem*.

76.

One who claims an undivided interest in lands in proceedings to sell them and divide the proceeds among tenants in common, and to pay debts, etc., may properly be made a party. *McKeel v. Holloman*, 163 N. C. 132, 79 S. E. 445.

78.

For notes on this section see Supplement 1913.

80.

For notes on this section see Supplement 1913.

81.

For notes on this section see Supplement 1913.

87.

For notes on this section see Supplement 1913.

93.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

103.

For notes on this section see Supplement 1913.

114.

For notes on this section see Supplement 1913.

124.

For notes on this section see Supplement 1913.

125.

For notes on this section see Supplement 1913.

**132. Order of distribution.**

6. If in the lifetime of its father and mother, a child shall die intestate, without leaving husband, wife or child, or the issue of a child, its personal property shall be equally divided between said father and mother. If one of said parents should be dead at the time of the death of such child, the surviving parent shall be entitled to the whole of said personal property: *Provided*, the terms "father" and "mother," herein used, shall not apply to a step-parent, but shall apply to a parent by adoption: *Provided, further*, this repeal shall not affect vested rights. (1911, c. 172; 1915, c. 37.)

8. If any married woman die intestate leaving one child and a husband, her personal estate shall be equally divided between the child and husband. If she leave more than one child and a husband, her personal estate shall be divided in equal portions and the husband shall receive a child's part. (1913, c. 166; 1915, c. 37.)

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

6. Under this section the father only is entitled to sue for damages for the mutilation of a dead son, and the mother cannot recover for mental anguish occasioned thereby. *Floyd v. R. R.*, 167 N. C. 55, 83 S. E. 12.

**133.**

For notes on this section see Supplement 1913.

**137.**

Within the intent of the Federal Employers' Liability Act, the meaning of the words "next of kin" depending upon the employee, who are given a right of action against a railroad company for his wrongful death, when he has no surviving widow or husband or children, is controlled in this State by this section. *Kenny v. R. R.*, 167 N. C. 14, 82 S. E. 968.

**144.**

For notes on this section see Supplement 1913.

**145.**

For notes on this section see Supplement 1913.

**149.**

For notes on this section see Supplement 1913.

**150.**

For notes on this section see Supplement 1913.

**151.**

The legal presumption of death of one who has not been heard from for seven years or more will not arise unless it is made to appear that unavailing and reasonable inquiry has been made by his near relatives or those otherwise interested. *Sizer v. Severs*, 165 N. C. 500, 81 S. E. 685.

See *Sizer v. Severs*, 165 N. C. 500, 81 S. E. 685, for circumstances held to constitute sufficient inquiry.

For an action to recover on a life insurance policy on behalf of the



beneficiary, on the ground that the deceased had been absent for more than seven years, without hearing from him, see *Shuford v. Insurance Co.*, 167 N. C. 547, 83 S. E. 821.

156.

See notes to Section 157.

### 157. Actions which do not survive.

The following rights of action do not survive:

1. Causes of action for libel and for slander, except slander of title.
2. Causes of action for false imprisonment, and assault and battery.
3. Causes where the relief sought could not be enjoyed, or granting it would be nugatory, after death. (1915, c. 38.)

Actions for injuries to the person do not survive and this construction is in no way affected by Section 415 of the Revisal. *Hardy v. Insurance Co.*, 167 N. C. 569, 83 S. E. 801.

170a.

For notes on this section see Supplement 1913.

180.

Amended, see Supplement 1913.

For a case in which it was held that the plaintiff had not brought her case within the terms or spirit of this section, see *Howell v. Solomon*, 167 N. C. 588, 83 S. E. 609.

181.

For notes on this section see Supplement 1913.

207.

For notes on this section see Supplement 1913.

211.

For notes on this section see Supplement 1913.

211a.

For notes on this section see Supplement 1913.

212c.

For notes on this section see Supplement 1913.

213.

For notes on this section see Supplement 1913.

216.

For notes on this section see Supplement 1913.

224.

Amended, see Supplement 1913.

### 227a. Prohibiting foreign corporations from doing a fiduciary business in this State and limiting the use of the word trust.

1. No corporation organized under the laws of any other State other than North Carolina or organized under the laws of any foreign country



shall be eligible or entitled to qualify in this State as executor, administrator, guardian or trustee under the will of any person domiciled in this State at the time of his death.

2. That no corporation shall be hereafter chartered under the laws of North Carolina with the word "trust" as a part of its name, except corporations reporting to and under the supervision of the Corporation Commission; nor shall any corporate name be so amended as to include the word "trust" unless the corporation be under such supervision.

3. No person, firm, association or corporation domiciled within the State of North Carolina, except only corporations reporting to and under the supervision of the Corporation Commission of this State shall therein advertise and put forth any sign as a trust company or in any way solicit or receive deposits or transact business as a trust company, or use the word "trust" as a part of his or its name or title: *Provided*, that this act shall not be held to prevent any individual as such, from acting in any trust capacity as heretofore. Any violation of any provision of this section shall constitute a misdemeanor and on conviction thereof the offender shall be fined in a sum not exceeding five hundred dollars for each offense. (1915, c. 196. In effect March 9, 1915.)

**233a.**

As to deposits by infants see Section 233b.

**235.**

For notes on this section see Supplement 1913.

**237.**

For notes on this section see Supplement 1913.

**239.**

For notes on this section see Supplement 1913.

**252.**

For notes on this section see Supplement 1913.

**253.**

For notes on this section see Supplement 1913.

**254.**

For notes on this section see Supplement 1913.

**255.**

For notes on this section see Supplement 1913.

**281.**

For notes on this section see Supplement 1913.

**285.**

This section has no application to actions by an employer against a surety on its indemnity bond. *Insurance Co. v. Bonding Co.*, 162 N. C. 384, 78 S. E. 430.

**297.**

Amended, see Supplement 1913.

**298.**

For notes on this section see Supplement 1913.

**310.**

For notes on this section see Supplement 1913.

**319.**

For notes on this section see Supplement 1913.

**320. Public administrator.**

The public administrator shall enter into bond, with three or more sureties, approved by the clerk, in the penal sum of four thousand dollars, payable to the state of North Carolina, conditioned faithfully to perform the duties of his office, and obey all lawful orders of the clerk or other court touching the administration of the several estates that may come into his hands, and such bond shall be renewed every two years. Whenever the aggregate value of the real and personal property belonging to the several estates in the hands of the public administrator shall exceed the one-half of his bond, the clerk shall require him to enlarge his bond in amount so as to cover, at all times, at least the double of such aggregate. (1915, c. 216.)

**326.**

If the parties to the proceeding are mere occupants, the adjudication as to the dividing line does not affect the title, and only determines the right to possession on either side of the line; but if they are adjoining owners, and the location of the deeds and grants under which they claim is put in issue and determined, they cannot afterwards litigate this location and contend that the lines of their deeds and grants are at some other place than the one settled by the proceeding. In neither case is the title adjudicated, although in many instances the location of the deeds and grants may have an important bearing as evidence on the trial of an issue of title. *Whitaker v. Garden*, 167 N. C. 658, 83 S. E. 759.

Since the enactment of Section 717, the parties may under this section establish the dividing line without putting the title in issue, or they may join issue also upon the title. If the first course is adopted the judgment is an estoppel as to where the line is located, but not as to title, and under the second the issues raised are transferred to the Superior Court in term and judgment estops as to title and as to location of the line. *Whitaker v. Garden*, 167 N. C. 658, 83 S. E. 795.

For case proceeding hereunder see *Austin v. McCollum*, 166 N. C. 220, 81 S. E. 1135.

For additional notes on this section see Supplement 1913.

**328.**

For notes on this section see Supplement 1913.

**341.**

For notes on this section see Supplement 1913.

**352.**

For notes on this section see Supplement 1913.



354.

For notes on this section see Supplement 1913.

356.

For notes on this section see Supplement 1913.

359.

As this section fixes the time of the inception of the action, it is pending from that time and not from the time of the service of the summons. *Pettigrew v. McCain*, 165 N. C. 472, 81 S. E. 701.

360.

Generally, as between a trustee and *cestui que trust*, in the case of an express trust, the statute of limitations has no application, and no lapse of time constitutes a bar. *Rouse v. Rouse*, 167 N. C. 208, 83 S. E. 305.

The provision of Section 6 of the Employers' Liability Act, reading, "that no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued," is a statute of limitation, and must be specially pleaded under this action. *Burnett v. R. R.*, 163 N. C. 186, 79 S. E. 414.

For additional notes on this section see Supplement 1913.

362.

For notes on this section see Supplement 1913.

363.

Coverture is not now a defense in bar of the running of the statute of limitations, since February, 1899. *Carter v. Reaves*, 167 N. C. 131, 83 S. E. 248.

For additional notes on this section see Supplement 1913.

366.

The effect of the absence of a party exists by reason of the statutory provision affecting the statute of limitation proper, and is not necessarily controlling as to the common law presumption of forfeiture of the right to caveat a will for unreasonable delay or acquiescence. *In re Dupree's Will*, 163 N. C. 256, 79 S. E. 611.

For additional notes on this section see Supplement 1913.

367.

On March 18, 1893, a judgment was obtained against an administratrix. About five years thereafter, in 1898, the administratrix died and there was no further administration upon the estate until July 3, 1911. *Held*: A proceeding commenced on July 11, 1911, to sell land to make assets to pay the judgment is barred under this section. *Fisher v. Ballard*, 164 N. C. 326, 80 S. E. 239.

For additional notes on this section see Supplement 1913.

370. New action within one year after nonsuit, etc.

If an action shall be commenced within the time prescribed therefor, and the plaintiff be nonsuited, or a judgment therein be reversed on appeal, or be arrested, the plaintiff, or if he die and the cause of action survive, his heir or representative, may commence a new action within one year after such nonsuit, reversal, or arrest of judgment: *Provided*,

that the costs in such action shall have been paid by the plaintiff before the commencement of the new suit, unless said first suit shall have been brought *in forma pauperis*. (1915, c. 211.)

For notes on this section see Supplement 1913.

## 371.

If the debtor constitutes a *third person* his agent to hold, and, in case of default, to realize on collateral and apply the proceeds to his debt, payment of such proceeds by such agent will interrupt the statute. *Bank v. King*, 164 N. C. 303, 80 S. E. 251.

Payments made on a note given by a corporation with individuals as sureties, by a receiver of the corporation, are not such as will repel the bar of the statute of limitations. *Bank v. Hamrick*, 162 N. C. 216, 78 S. E. 12.

## 380.

See notes to Section 384.

For additional notes on this section see Supplement 1913.

1. The possession referred to is actual possession, not necessarily continuous occupation of the property, but there must be some possession of a hostile character sufficiently definite and observable to apprise the true owner that his proprietary rights are being invaded, and of the extent of the adverse claim. *May v. Manufacturing Co.*, 164 N. C. 262, 80 S. E. 380.

## 382.

**Generally.**—A test of adverse possession is the exposure of the occupant to an action of trespass. *Christman v. Hilliard*, 167 N. C. 4, 82 S. E. 949.

A casual or intermittent interruption of the possession of one who occupies land under a deed conveying it under known and visible boundaries is insufficient to defeat his title when otherwise his possession for seven years has ripened it to the whole of the lands thus conveyed. *Ray v. Anders*, 164 N. C. 311, 80 S. E. 403.

When the defendant relies on a deed made to his ancestor as color, and adverse possession of others thereunder to ripen his title, it is necessary to show that their occupancy was under or connected with the deed under which he claims, or the presumption will obtain that they were under the true title shown by the plaintiff. *Land Co. v. Floyd*, 167 N. C. 686, 83 S. E. 687.

See note to Section 384.

For additional notes on this section see Supplement 1913.

**Color of title.**—The definition of color of title, by *Judge Hoke*, in *Smith v. Proctor*, 139 N. C. 324, is that "Color of title is a paper writing (usually a deed) which professes and appears to pass the title, but fails to do so." This appears to be the best and clearest definition. *Norwood v. Totten*, 166 N. C. 648, 82 S. E. 951.

A claim to property under a conveyance, however inadequate to carry the true title, and however incompetent the grantor may have been to convey, is one under color of title, which will draw to the possession of the grantee the protection of the statute of limitations. *Seals v. Seals*, 165 N. C. 409, 81 S. E. 613.

An administrator's deed which purports to convey the entire interest in land is color of title, though it only conveys a moiety. *Gilbert v. Hopkins* (C. C. A.), 204 Fed. 196.



A void deed is color of title for the purpose of showing that the parties litigant in an action involving ownership of timber claimed it from a common source. *Riley v. Carter*, 165 N. C. 334, 81 S. E. 414.

A deed procured by fraud, but not void on its face, and requiring the intervention of the court of equity to declare it so, is color of title. *Seals v. Seals*, 165 N. C. 409, 81 S. E. 613.

A conveyance of land by the wife to her husband without her privy examination and the certificate of the probate officer that the contract "is not unreasonable or injurious to her," is color of title. *Norwood v. Totten*, 166 N. C. 648, 82 S. E. 951.

A deed which is signed by one as guardian for another, which does not purport to convey the interest of the ward and which makes no reference to any such guardianship, is void upon its face, and is not color of title as to the interest of the ward. *Fisher v. Toxaway Co.*, 165 N. C. 663, 81 S. E. 925.

A paper which does not purport to evidence an acquisition of any rights in land, but only the assignment of a right already existing (*i. e.*, a deed of partition), is not color of title. *Betts v. Gahagan* (C. C. A.), 212 Fed. 120.

A paper writing not under seal and signed by a *feme covert* without her privy examination, reading, "Received of W. T. S. \$10, to be applied on the purchase of Z. G. land," adjoining certain other tracts of land, is construed as a contract to convey the land, and constitutes color of title thereto. *Gann v. Spencer*, 167 N. C. 429, 83 S. E. 620.

Where a conveyance is accepted as a performance of bond for title, the bond can not be relied on as color of title to land beyond the limits of the conveyance as the conveyance is a satisfaction of all rights of the vendee under the bond. *Betts v. Gahagan* (C. C. A.), 212 Fed. 120.

When a bond is unconditional and calls for no future payment the presumption is that the purchase price was paid before or at the time the bond was signed; and such a bond is color of title. *Betts v. Gahagan* (C. C. A.), 212 Fed. 120.

A judgment of a court of competent jurisdiction in an action involving title to land in dispute, declaring that a certain party is the owner and entitled to the possession thereof, is color of title. *Burns v. Stewart*, 162 N. C. 360, 78 S. E. 321.

An allotment of lands to a tenant in common under a judgment in proceedings to partition them among all of the tenants, purporting to allot to each tenant his share of the entire estate in severalty, is color of title as to the share allotted. *Lumber Co. v. Cedar Works*, 165 N. C. 83, 80 S. E. 982.

Where the parties to the action claim from a common source of title, an unregistered deed does not constitute color of title. *Moore v. Johnson*, 162 N. C. 266, 78 S. E. 158.

For discussion of what constitutes color of title, see *Burns v. Stewart*, 162 N. C. 360, 78 S. E. 321.

*Ripening into title.*—Defendant's possession under color is insufficient to ripen his title to lands, where it is shown that plaintiffs' predecessor in title brought suit for the lands before the defendant had been in possession seven years, which action was nonsuited and another action was again instituted by the plaintiffs within a year. *Hopkins v. Crisp*, 166 N. C. 97, 81 S. E. 1069.

In order to establish a title by actual occupation under color, the possession or occupation must be under or in some way connected with the color of title claimed. *Land Co. v. Floyd*, 167 N. C. 686, 83 S. E. 687.

**Lappage.**—When one enters on a tract of land under a deed having known and visible lines and boundaries and occupies any portion of

the tract, asserting ownership of the whole, there being no adverse occupation of any part, the force and effect of such occupation will be extended to the outer boundaries of his deed, and if exclusive and continuous for seven consecutive years, the title being out of the State, such possession will ripen into an unimpeachable title to the entire tract. *Ray v. Anders*, 164 N. C. 311, 80 S. E. 403.

Title acquired by adverse possession, without color, is confined to the land occupied. *Anderson v. Meadows*, 162 N. C. 400, 78 S. E. 279.

**Evidence.**—The listing of the land and payment of taxes is a relevant fact in connection with other circumstances, tending to show a claim of title and an adverse or hostile possession, though not sufficient by itself for the purpose. *Christman v. Hilliard*, 167 N. C. 4, 82 S. E. 949.

Where adverse possession is relied on to establish title, directions of the party to his tenants to use the land is some evidence thereof. *Snowden v. Bell*, 166 N. C. 208, 80 S. E. 888.

There is no presumption in law of adverse possession against a true paper title, and the burden of proof was on W. to show some act of ouster of R., of which the evidence in the case is insufficient. *Fowle v. Whitley*, 166 N. C. 445, 82 S. E. 841.

Where the defendant pleads the statute of limitations, it is for the plaintiff to prove that the action is not barred. *Ditmore v. Rexford*, 165 N. C. 620, 81 S. E. 994.

While building a house on lands and marking its boundaries are some evidence of possession, it is not conclusive. *Land Co. v. Cloyd*, 165 N. C. 595, 81 S. E. 752.

383.

For notes on this section see Supplement 1913.

384.

A municipality may acquire title to land by adverse possession. *Raleigh v. Durfey*, 163 N. C. 154, 79 S. E. 434.

When the evidence is conflicting, adverse possession is a mixed question of law and fact, to be determined by the jury under proper instructions from the court. *Reynolds v. Palmer*, 167 N. C. 454, 83 S. E. 755.

The possession of land is presumed to be adverse, only when nothing else is shown but the mere fact of possession, as when it is sought to show title out of the State. *Land Co. v. Floyd*, 167 N. C. 686, 83 S. E. 687.

The expression that "possession is making that use of the land to which it is best suited," will not be held for reversible error when the judge immediately and in the same connection explains fully to the jury what was meant by that expression. *Reynolds v. Palmer*, 167 N. C. 454, 83 S. E. 755.

While generally the statute of limitations will not run against one in possession of the property, the principle in question obtains, as a rule, when the occupation of the property or the enjoyment of the rights is hostile to the adverse claim or in some way antagonizes it. *Jefferson v. Lumber Co.*, 165 N. C. 46, 80 S. E. 882.

When a receiver has been appointed by a court to hold lands to pay alimony from its rents and profits and he permits the wife to remain on the land and retain the rents and profits, in carrying the order into effect, her possession is not adverse to the husband or those claiming under him. *Boggle v. Orrell*, 163 N. C. 489, 79 S. E. 957.

Failing to offer a grant from the State, the plaintiff must prove adverse occupation and claim of ownership for the land in dispute and



covered by his deed, for 21 continuous years prior to the alleged trespass, for he must have acquired title at the time of the trespass. *Barfield v. Hill*, 163 N. C. 262, 79 S. E. 677.

The law raises a legal presumption of title in one who has been in adverse possession of lands, receiving the rents and profits for twenty years or more, which will bar the entry of another claiming an undivided interest therein as tenant in common. *McKeel v. Holloman*, 163 N. C. 132, 79 S. E. 445.

One who cuts wood upon the lands in dispute at several separate times, without title, is a trespasser upon the lands, and evidence of this character is insufficient to ripen title as adverse possession without "color." *Campbell v. Miller*, 165 N. C. 51, 80 S. E. 974.

The occasional cutting of timber, alone, will not sustain a claim of adverse possession. *Betts v. Gahagan* (C. C. A.), 212 Fed. 120.

When it is sought to extend the effect of an adverse occupation beyond an actual inclosure or clearing and up to marked lines and boundaries, there must be some evidence tending to connect the physical occupation with the boundaries claimed or some exclusive control and dominion over the unoccupied portion sufficiently definite and observable, as stated, to apprise the true owner of the extent of the adverse claim. *May v. Manufacturing Co.*, 164 N. C. 262, 80 S. E. 380.

Where the mineral interests in lands have been separately conveyed, and there is sufficient evidence of adverse possession to ripen title in the occupant and defeat the grantee's paper title, it applies to all of the mineral interests conveyed by the deed, and is not confined to the particular mineral or minerals which had been mined. *Hoilman v. Johnson*, 164 N. C. 268, 80 S. E. 249.

When the rights are severed the owner of the surface can acquire no title to the minerals by exclusive and continuous possession of the surface, nor does the owner of the minerals lose his right or his possession by any length of nonuser. *Hoilman v. Johnson*, 164 N. C. 268, 80 S. E. 249.

See notes to Sections 380, 382. For additional notes on this section see Supplement 1913.

### 386.

Where it is shown that the title, having been granted by the State, is vested in a claimant by proper mesne conveyances, then, under this section, the law will presume the occupation of land to be "under and in subordination to the true title until the contrary is made to appear." *Land Co. v. Floyd*, 167 N. C. 686, 83 S. E. 687.

Cited but not construed in *Christman v. Hilliard*, 167 N. C. 4, 82 S. E. 949.

For additional notes on this section see Supplement 1913.

### 388.

While a railroad company which devotes a part of its right of way to public use inconsistent with railway purposes may not lose its property right therein, the State may in the exercise of its police power limit the speed of trains; require notice of their approach; fix hours for shifting cars, and periods of stoppage of cars, and require the adjustment of tracks to the established grade of the streets, in business sections of the municipality. *Atlantic Coast Line v. Goldsboro*, 232 U. S. 548, affirming *R. R. v. Goldsboro*, 155 N. C. 356. In this case ordinances of the city of Goldsboro were called into question.

For additional notes on this section see Supplement 1913.

389.

The statute of limitations does not run against a municipal corporation as to its streets. *Seaboard A. L. Ry. Co. v. Raleigh* (Dis. Ct.), 219 Fed. 573.

389.

For additional notes on this section see Supplement 1913.

390.

The right of action of a party whose claim is based upon the doctrine of subrogation is barred by the same period of limitation which would have barred an action by the party under whom he claimed. *Insurance Co. v. R. R.*, 165 N. C. 136, 80 S. E. 1069.

391.

This section applies to final judgments, or to judgments or decrees which partake of that nature, and was never intended to affect interlocutory judgments, and in a cause still pending. *Davis v. Pierce*, 167 N. C. 135, 83 S. E. 182.

Where a purchaser has entered into possession of the lands bid in at judicial sale, without paying the purchase price, he may not avail himself of the bar of the ten years statute of limitations, though the cause had been dropped from the docket for twelve years. *Davis v. Pierce*, 167 N. C. 135, 83 S. E. 182.

For additional notes on this section see Supplement 1913.

1. Where judgment is rendered in the Superior Court upon judgment theretofore rendered, the statute of limitation as to the prior judgments should have been pleaded in the later action, if available, and cannot be considered in a creditors' suit to enforce the later judgment. *Hardin v. Greene*, 164 N. C. 99, 80 S. E. 413.

392.

For notes on this section see Supplement 1913.

394.

For additional notes on this section see Supplement 1913.

2. An action for damages arising from sickness caused by the negligence of a railroad in failing to properly keep open a culvert under its track to carry off accumulating or running waters, resulting in ponding the waters upon plaintiff's lands under his dwelling house, is not barred by this section. *Rice v. R. R.*, 167 N. C. 1, 82 S. E. 1034.

5. Cited but not construed in *Owenby v. R. R.*, 165 N. C. 641, 81 S. E. 997.

395.

For additional notes on this section see Supplement 1913.

1. Where the parties have agreed that A. should receive compensation for services rendered B. at the death of B., the statute of limitations does not begin to run until the death of B. *Helsabeck v. Doub*, 167 N. C. 205, 83 S. E. 241.

9. Under this section the cause of action arises when the mistake is discovered, or should have been in the exercise of ordinary care. *Jefferson v. Lumber Co.*, 165 N. C. 46, 80 S. E. 882.



396.

(1) This section is not, in strict terms, an act limiting the time in which the action may be prosecuted, but it imposes upon the creditor the duty of presenting his claim within a defined period of time, and upon his failure to do so forbids a recovery in any suit thereafter brought. *Dockery v. Hamlet*, 162 N. C. 118, 78 S. E. 13.

Unless it appears upon the face of the complaint that claim was made as this section provides, within two years after the maturity of the claim, the claim is barred, and demurrer that it states no cause of action should be sustained. *Dockery v. Hamlet*, 162 N. C. 118, 78 S. E. 13.

See Section 1385 as to form of account and form of presentation.

399.

For notes on this section see Supplement 1913.

400.

A bank which holds a note "for collection" is not a real party in interest under this section. *Bank v. Exum*, 163 N. C. 199, 79 S. E. 498.

A pledgor of a note has still at least a distinct beneficial or equitable interest in the note pledged, and is a real party in interest, and may sue thereon without making the pledgee a party, if he produces the note in court so that a judgment may be so framed as to protect the rights of his debtor. *Ball-Thrash v. McCormick*, 162 N. C. 471, 78 S. E. 303.

During the lifetime of a life tenant a remainderman is not a real party in interest within the meaning of this section and cannot maintain an action to recover the land. *Blount v. Johnson*, 165 N. C. 25, 80 S. E. 882.

For additional notes on this section see Supplement 1913.

403.

The remedy to enforce a decree under a judicial sale of land for the collection of the purchase price of the land is by motion in the cause, the matter remaining under the control of the court, and in proper instances the court may decree a resale of the land if the purchaser does not pay the price within a specified time—in this case, within sixty days. *Davis v. Pierce*, 167 N. C. 135, 83 S. E. 182.

404.

For notes on this section see Supplement 1913.

405.

For notes on this section see Supplement 1913.

406.

The appointment of a guardian *ad litem* before service of the infants, is irregular, but it does not render the proceeding void, and the irregularity may be cured by the service of the summons on the infants thereafter and the filing of an answer by the guardian *ad litem*. *Dudley v. Tyson*, 167 N. C. 67, 82 S. E. 1025.

For additional notes on this section see Supplement 1913.

408.

In an action against a married woman under this section, the husband is not a necessary or even a proper party. *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820.

For additional notes on this section see Supplement 1913.

## 409.

An action brought by the father, in his own behalf and in that of his son, a minor, as next friend, alleging damages to them both for a personal injury to the latter, is a misjoinder of parties as well as causes of action, not capable of division, and may be dismissed. *Campbell v. Power Co.*, 166 N. C. 488, 82 S. E. 842.

## 410.

A party who has no interest in the assets of a corporation and claims none, and to whom the corporation has incurred no liability, is not a proper party in an action for the appointment of a receiver of the corporation to the end that its assets may be collected and administered. *Dailey v. Fertilizer Works*, 165 N. C. 60, 80 S. E. 891.

Several defendants may be jointly sued for damages for the same tort arising from one and the same transaction. *Tyler v. Lumber Co.*, 165 N. C. 163, 81 S. E. 139.

Where the stockholders of a corporation sue its officers for damages for their mismanagement and negligence in accepting worthless paper, and inducing plaintiffs to become indorsees thereof to their loss and damage, and in failing to indorse these papers themselves under an agreement to do so, demurrer for misjoinder of parties is properly overruled. *Ayers v. Bailey*, 162 N. C. 209, 78 S. E. 66.

One who claims an undivided interest in lands in proceedings to sell them and divide the proceeds among tenants in common and to pay debts, etc., may properly be made a party. *McKeel v. Holloman*, 163 N. C. 132, 79 S. E. 445.

For additional notes on this section see Supplement 1913.

## 411.

Whether one who is not a necessary party is a proper party is one within the discretion of the trial judge, and from his decision thereof no appeal lies. *Spruill v. Bank*, 163 N. C. 43, 79 S. E. 262.

The payee of a check is not a necessary party to a suit by the maker against the bank for paying the check after notice not to do so, the only issue being the question of notice. *Spruill v. Bank*, 163 N. C. 43, 79 S. E. 262.

## 413.

It is not necessary that all the members of an alleged partnership should be served with summons in the action. *Daniel v. Bethell*, 167 N. C. 218, 83 S. E. 307.

For additional notes on this section see Supplement 1913.

## 414.

When it appears that a person petitioning to be made a party is not a real party in interest, and that his only purpose is to set aside a sale made by the court, satisfactory to the adult parties interested therein, his petition will be refused. *Thompson v. Rospigliosi*, 162 N. C. 145, 77 S. E. 113.

Under this section, in a suit against a partnership, one of the partners may be brought in, and made a party after judgment against the other. *Daniel v. Bethell*, 167 N. C. 218, 83 S. E. 307.

Where a guardian *ad litem* is appointed and made a party at the trial term of the action, without change of pleading, it does not give the opposing party a legal right to continue the cause. *Watson v. R. R.*, 164 N. C. 176, 80 S. E. 175.



See notes to Section 410. For additional notes on this section see Supplement 1913.

415.

Inasmuch as under Section 157, causes of action for injuries to the person do not survive, they are not within the provisions of this section. *Watts v. Vanderbilt*, 167 N. C. 567, 83 S. E. 813. But see Section 157 as amended.

For additional notes on this section see Supplement 1913.

417.

An action upon a bond by the obligee for moneys due for his reasonable support does not abate upon his death, and the Superior Court clerk has authority to make his administrator a party under this section. *Martin v. Martin*, 162 N. C. 41, 77 S. E. 1104.

419.

For additional notes on this section see Supplement 1913.

1. Where the action involves in whole or in part, the official conduct of the municipal officers in the county of its situs, the action must be brought in that county, under Section 420(2). That subsection is an exception to the general rule of this subsection. *Cecil v. High Point*, 165 N. C. 431, 81 S. E. 616.

420.

For additional notes on this section see Supplement 1913.

2. Where the action involves, in whole or in part, the official conduct of a municipal officer in the county of its situs, the cause of action should be said to have arisen in that county, within the meaning of this section, and the same should be instituted and tried there, subject to the right of the court, by subsequent order, to change the place of trial in "cases provided by law." *Cecil v. High Point*, 165 N. C. 431, 81 S. E. 616.

421.

An action, in the Superior Court, to recover judgment on a note for \$200 and to recover from an administratrix the amount due the maker from his father's estate, involves an account and settlement of said estate and must be instituted in the county where the administratrix qualified. *Thomas v. Ellington*, 162 N. C. 131, 78 S. E. 12.

For additional notes on this section see Supplement 1913.

432.

See notes to Section 424.

For notes on this section see Supplement 1913.

423.

**Removal to Federal Court.** *Generally.*—A petition for removal filed after the statutory time has expired comes too late, even though filed within the time allowed for answering by order of the court, where such order is based on the stipulation of the parties. *Pruitt v. Power Co.*, 165 N. C. 416, 81 S. E. 624.

The Federal court may, notwithstanding the refusal of the State court to remove, send a *certiorari* to the State court for the transcript of the record, which the clerk of the State court must obey. *Pruitt v. Power Co.*, 165 N. C. 416, 81 S. E. 624.

Pending an appeal from an order of the trial court refusing to remove the cause to the Federal court, it is error for the trial court to proceed with the trial and determine the issues involved, over the objections of the defendant. *Pruitt v. Power Co.*, 167 N. C. 598, 83 S. E. 830.

Where it appears from the complaint that damages are alleged for cutting plaintiff's timber in the sum of \$2,250, and the petition to remove denies plaintiff's title to the lands, valued at \$800, the title to the lands is in controversy, and the amounts thus involved exceeding \$3,000, exclusive of interest and cost, it is sufficient for the purposes of removal. *Brinkley v. Lumber Co.*, 166 N. C. 501, 82 S. E. 855.

*Extension of time for pleading.*—When the judge of the Superior Court enlarges the time for filing pleadings, it has the same force and effect as if the extended period had originally been allowed by the statute for filing the pleading. *Hyder v. R. R.*, 167 N. C. 584, 83 S. E. 689.

The entering into the stipulation for an extension of time to file the answer, which was duly approved by the judge, was a general appearance in the State court and waived the right to remove. It was an acceptance of the jurisdiction of the State court. *Pruitt v. Power Co.*, 165 N. C. 416, 81 S. E. 624.

*Diversity of citizenship.*—Where a cause is sought to be removed upon the ground that the movant is a non-resident corporation, the question of citizenship depends upon the construction of its charter, and in determining it the State courts may take judicial notice of pertinent State legislation upon the subject, and reports made by the defendant to the Corporation Commission, which are public documents. *Cox v. R. R.*, 166 N. C. 652, 82 S. E. 979.

The leasing and operating of a domestic railroad by a foreign railroad company cannot have the effect of making the lessee road a domestic corporation, or prohibit it from removing a cause to the Federal court under the Federal act permitting it. *Hyder v. R. R.*, 167 N. C. 584, 83 S. E. 689.

An appeal presently lies from an order denying an application, upon proper petition and bond, to remove a cause to the Federal court for diversity of citizenship under the Federal removal act. *Pruitt v. Power Co.*, 167 N. C. 598, 83 S. E. 830.

When the petition alleges that the defendant is a foreign corporation and that the plaintiff is a citizen resident of the State of North Carolina, the judge of the Superior Court has no duty to perform other than to make the order to remove the cause. *Hyder v. R. R.*, 167 N. C. 584, 83 S. E. 689.

*Fraudulent joinder.*—Where resident defendants are joined with a non-resident, and the latter applies for removal for fraudulent joinder, the question of fraud can be raised only by stating facts from which the fraudulent joinder necessarily appears, and not by a single averment of fraud or by alleging fraud in general though positive terms that the residents were joined for the sole purpose of applying for removal, and not with the honest intent of seeking relief against them. *Pruitt v. Power Co.*, 165 N. C. 416, 81 S. E. 624.

Where one of the defendants is a non-resident of the State and files a petition and bond for the removal of the cause to the Federal court for diversity of citizenship, upon the ground of fraudulent joinder of the resident defendant, he should allege such facts as to raise the issue of fraud to be tried in the Federal jurisdiction. *Lloyd v. R. R.*, 166 N. C. 24, 81 S. E. 1003.



In order to a valid petition, on the ground of fraudulent joinder of a resident defendant, the facts and circumstances constituting the alleged fraud must be fully set forth and with such definiteness as to show that there has been a fraudulent joinder. The position should appear as a conclusion of law from the facts stated. *Smith v. Quarries Co.*, 164 N. C. 338, 80 S. E. 388.

*Jurisdiction of State Court.*—While it is true that when a verified petition for removal is filed, accompanied by a proper bond, and same contains facts sufficient to require a removal under the law, the jurisdiction of the State court is at an end, this position obtains only as to such issues of fact as control and determine the right of removal, and on an application for removal by reason of fraudulent joinder, such an issue is not presented by merely stating the facts of the occurrence showing a right to remove, even though accompanied by general averment of fraud or bad faith. *Smith v. Quarries Co.*, 164 N. C. 338, 80 S. E. 388.

The State court should not surrender its jurisdiction unless the petition shows upon its face a removable cause and unless such petition and accompanying bond are filed in the State court within the time required by the act of Congress. *Pruitt v. Power Co.*, 165 N. C. 416, 81 S. E. 624.

Whether the petition in its tenor, and time of filing, authorizes the removal is a matter for decision by the State court in the first instance. *Pruitt v. Power Co.*, 165 N. C. 416, 81 S. E. 624.

The mere filing of a transcript in the Federal court and docketing the case there does not prevent the State court from proceeding with the cause by trial and final determination in the exercise of its jurisdiction. *Lloyd v. R. R.*, 166 N. C. 24, 81 S. E. 1003.

The State court will determine for itself whether the allegations of the petition are sufficient in law to raise the issue of fraudulent joinder before surrendering its jurisdiction of the cause. *Lloyd v. R. R.*, 166 N. C. 24, 81 S. E. 1003.

Upon a petition for removal, where there is no dispute as to the facts, and the real controversy is a matter of law arising out of the facts, the State court will decide the question. *Hurst v. R. R.*, 162 N. C. 368, 78 S. E. 434.

For a case discussing the right of removal upon the ground of fraudulent joinder of a resident party, see *Lloyd v. R. R.*, 162 N. C. 485, 78 S. E. 489. See this case also as to the effect of nonsuit as to the resident party.

For case discussing the right of removal of action brought under Federal Employers' Liability Act, see *Lloyd v. R. R.*, 162 N. C. 485, 78 S. E. 489.

For additional notes on this section see Supplement 1913.

424.

A corporation of this State should bring its action in the county wherein it has its principal place of business, and not in the county wherein the defendant resides. *R. R. v. Spencer*, 166 N. C. 522, 82 S. E. 851.

425.

For additional notes on this section see Supplement 1913.

In this case it was held that an action brought in plaintiff's county for an accounting in which the ownership of certain notes and bonds was only raised incidentally, was improperly removed to the county of the defendant. *Clow v. McNeill*, 167 N. C. 212, 83 S. E. 308.

The right of removal is lost when the answer is filed, notwithstanding it may be afterwards withdrawn, upon leave, for the purpose of making a motion to remove. *Trustees v. Fetzner*, 162 N. C. 245, 78 S. E. 152.

Applied in *R. R. v. Spencer*, 166 N. C. 522, 82 S. E. 851.

For additional notes on this section see Supplement 1913.

1. An action involving an account and settlement by an administrator should be brought where he has qualified, and when brought elsewhere, should be removed thereto on proper motion. *Thomas v. Ellington*, 162 N. C. 131, 78 S. E. 12.

426.

For notes on this section see Supplement 1913.

430.

For notes on this section see Supplement 1913.

431.

For notes on this section see Supplement 1913.

433.

For notes on this section see Supplement 1913.

434.

A summons is irregular when made returnable at a term of court less than ten days from its date of issue; but a defendant against whom a judgment has been obtained in the action cannot avail himself thereof when he has moved for a restraining order. *McDowell v. Justice*, 167 N. C. 493, 83 S. E. 803.

When a summons has been issued within less than ten days of the beginning of the next term of the Superior Court and is made returnable to such term, the action will be dismissed upon defendant's motion made on special appearance. *Scott v. Jarrell*, 167 N. C. 364, 83 S. E. 563. As to the power of the court to permit amendment of such summons upon request of plaintiff, *Quaere*.

439.

For notes on this section see Supplement 1913.

440.

For notes on this section see Supplement 1913.

441.

For notes on this section see Supplement 1913.

442.

Cited but not construed in *Armstrong v. Kensell*, 164 N. C. 125, 80 S. E. 235.

For additional notes on this section see Supplement 1913.

3. Cited but not construed in *Armstrong v. Kensell*, 164 N. C. 125, 80 S. E. 235.

443.

For notes on this section see Supplement 1913.

444.

For notes on this section see Supplement 1913.



445.

Discussed in dissenting opinion of Clark, C. J., in *Pettigrew v. McCoin*, 165 N. C. 472, 81 S. E. 701.  
See notes to Section 359.

447.

For notes on this section see Supplement 1913.

448.

For notes on this section see Supplement 1913.

449.

For notes on this section see Supplement 1913.

450.

Prosecution bonds given under this section are liable for all of the defendant's cost of the action, at any stage, whether incurred below or in the Supreme Court, upon defendant's appeal. *Kenny v. R. R.*, 166 N. C. 566, 82 S. E. 849.

It seems that though the summons may be issued in the time limited, yet if the prosecution bond made a prerequisite by this section is not, the suit will fail. *R. R. v. Oates*, 164 N. C. 167, 80 S. E. 398.

It has been uniformly held under this section that the court may permit the undertaking to be filed after the writ is returned. *Pharr v. Commissioners*, 165 N. C. 523, 81 S. E. 782.

See notes to Section 730.

451.

For notes on this section see Supplement 1913.

453.

Where the defendant neither files the undertaking required by this section nor procures leave to defend without giving the same (Section 454) the court may strike out the answer and render judgment by default. *Patrick v. Dunn*, 162 N. C. 19, 77 S. E. 995.

Cited but not construed in *School v. Pierce*, 163 N. C. 424, 79 S. E. 687.

For additional notes on this section see Supplement 1913.

454.

See notes to preceding section.

460.

For notes on this section see Supplement 1913.

462.

For notes on this section see Supplement 1913.

467.

Though the prayer for relief is based merely upon contract the plaintiff is entitled to recover upon the equitable doctrine of subrogation, if the facts alleged entitled him to such relief. *Baber v. Hanie*, 163 N. C. 588, 80 S. E. 57.

For additional notes on this section see Supplement 1913.

2. An allegation made upon information and belief raises an issue when denied by the answer as readily as when made upon the pleader's own knowledge. *Linker v. Linker*, 167 N. C. 651, 83 S. E. 736.

Objection to a statement of a defective cause of action must be taken by demurrer, or it will be deemed waived. *Dockery v. Hamlet*, 162 N. C. 118, 78 S. E. 13.

A complaint will be liberally construed in plaintiff's favor to ascertain if the facts presented are sufficient to state a cause of action, or if facts sufficient for that purpose can be fairly gathered from it, however inartificially it may have been drawn. *Green v. Biggs*, 167 N. C. 417, 83 S. E. 553.

A complaint cannot be overthrown by a demurrer unless it be wholly insufficient. If in any portion of it, or to any extent, it presents facts sufficient to constitute a cause of action, or if facts sufficient for that purpose can be fairly gathered from it, the pleading will stand, however inartificially it may have been drawn or however uncertain, defective, or redundant may be its statements. *Hoke v. Glenn*, 167 N. C. 594, 83 S. E. 807.

## 469.

Under this section, an action in tort against several defendants is joint or several according to the declarations in the complaint, and the plaintiff's election determines the character of the tort, whether joint or several. *Pruitt v. Power Co.*, 165 N. C. 416, 81 S. E. 624.

Two distinct causes of action, one in contract and the other in tort, against different individuals, cannot be combined in the same suit. *Huggins v. Water*, 167 N. C. 197, 83 S. E. 334.

A demurrer for misjoinder of causes of action in a complaint is bad, the procedure being by motion to divide them. *Ayers v. Bailey*, 162 N. C. 209, 78 S. E. 66.

An action brought by the father, in his own behalf and in that of his son, a minor, as next friend, alleging damages to them for a personal injury to the latter, is a misjoinder of parties as well as causes of action, not capable of division, and may be dismissed. *Campbell v. Power Co.*, 166 N. C. 488, 82 S. E. 842.

For additional notes on this section see Supplement 1913.

1. Where the stockholders of a corporation sue its officers for damages for their mismanagement and negligence in accepting worthless paper, and inducing plaintiffs to become indorsees thereon to their loss and damage, and in failing to indorse these papers themselves under an agreement to do so, the causes of action are properly joined. *Ayers v. Bailey*, 162 N. C. 209, 78 S. E. 66.

## 471.

For notes on this section see Supplement 1913.

## 472.

For notes on this section see Supplement 1913.

## 473.

For notes on this section see Supplement 1913.

## 474.

The judgment upon a demurrer should do no more than adjudicate that the complaint does not state a cause of action and that the plaintiff has no right to sue. *Cavanaugh v. Jarman*, 164 N. C. 372, 79 S. E. 673.

Where the demurrer relies upon a special statute, which has not been referred to in the complaint, it is a speaking demurrer, and is bad. *Kendall v. Highway Commission*, 165 N. C. 600, 81 S. E. 995.



If any part of the complaint presents facts sufficient to constitute a cause of action, or if facts sufficient for that purpose can be gathered from it, under a liberal construction of its terms, the pleading will be sustained. *Hendrix v. R. R.*, 162 N. C. 9, 77 S. E. 1001.

For additional notes on this section see Supplement 1913.

3. It seems that when both parties are domiciled in this State, the defense that there is another action pending in a foreign jurisdiction may not be taken by demurrer. *Carpenter v. Hanes*, 162 N. C. 46, 77 S. E. 1101.

5. Cited but not construed in *Owenby v. R. R.*, 165 N. C. 64, 81 S. E. 997.

6. When the complaint is a defective statement of a cause of action and not necessarily a statement of a defective cause of action, it is error to dismiss the action, and the plaintiff should be allowed to amend. *Dockery v. Hamlet*, 162 N. C. 118, 78 S. E. 13.

Where an action has been dismissed upon the allegations of the complaint, these allegations will be taken as true upon the plaintiff's appeal. *Howell v. Howell*, 162 N. C. 283, 78 S. E. 228.

475.

For notes on this section see Supplement 1913.

476.

Where there is a misjoinder both of parties and causes of action a demurrer on that account should be sustained, unless, as in this case, one of the parties withdraws himself with his cause of action, leaving only one plaintiff, with a single cause, or with several that may be properly joined in one action. *Campbell v. Power Co.*, 166 N. C. 488, 82 S. E. 842.

For additional notes on this section see Supplement 1913.

477.

For notes on this section see Supplement 1913.

478.

For notes on this section see Supplement 1913.

479.

For additional notes on this section see Supplement 1913.

2. This section does not require that the new matter constituting a defense must exist at the time of the commencement of the action. *Williams v. Hutton*, 164 N. C. 216, 80 S. E. 257.

It is permitted under our practice to plead inconsistent defenses. *Williams v. Hutton*, 164 N. C. 216, 80 S. E. 257.

481.

In an action against a wife the husband cannot file a counter-claim, when the plaintiff claims nothing of him. *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820.

For additional notes on this section see Supplement 1913.

1. Can a counter-claim sounding in tort be set up as "arising out of the contract, etc.," under this section. *Carpenter v. Hanes*, 167 N. C. 551, 83 S. E. 577.

A counter-claim connected with the plaintiff's cause of action or with the subject of the same need not entirely mature before action commenced, nor even before answer is filed. *Williams v. Hutton*, 164 N. C. 216, 80 S. E. 257.

The right of a plaintiff to abandon his action and submit to a judgment of non-suit at any time before verdict rendered, does not apply where the defendant has pleaded as a counter-claim, a cause of action arising out of a contract or transaction set forth in the complaint as a ground for the plaintiff's cause. *Yellowday v. Perkinson*, 167 N. C. 144, 83 S. E. 341.

Defendant cannot recover on a counter-claim for malicious (so called) or wrongful abuse of process, when it appears there has been no illegal use of it. *Carpenter v. Hanes*, 167 N. C. 551, 83 S. E. 557.

The defendant cannot recover a counter-claim for malicious prosecution, when he does not allege the termination of the former suit, nor that his person or any of his property has been interfered with. *Carpenter v. Hanes*, 167 N. C. 551, 83 S. E. 557.

2. When the counter-claim is a cause of action arising under this subsection, the plaintiff may submit to a voluntary non-suit as to his own cause of action; but he cannot, by so doing, put an end to the defendant's right to litigate his counter-claim. *Yellowday v. Perkinson*, 167 N. C. 144, 83 S. E. 341.

483.

It seems that this section was passed to overturn the doctrine laid down in *Owens v. R. R.*, 88 N. C. 502. *Clark v. Wright*, 167 N. C. 646, 83 S. E. 775.

See the dissenting opinion of Clark, C. J. in *Clark v. Wright*, 167 N. C. 646, 83 S. E. 775, discussing the effect of that decision upon this section.

For additional notes on this section see Supplement 1913.

485.

For notes on this section see Supplement 1913.

487.

An appeal presently lies from an order denying an application upon proper petition and bond, to remove the cause to the Federal court for diversity of citizenship under the Federal removal act. *Pruett v. Power Co.*, 167 N. C. 598, 83 S. E. 830.

488.

See note to Section 490.

489.

See notes to Section 490. For additional notes on this section see Supplement 1913.

490.

This section should be at least substantially complied with. *Miller v. Curl*, 162 N. C. 1, 77 S. E. 952.

A judgment by default where there is a defective verification made by the plaintiff's attorney is not void but irregular. *Miller v. Curl*, 162 N. C. 1, 77 S. E. 952.

A verification made by an attorney "that the facts set forth . . . as of his own knowledge are true and those stated on information and belief he believes to be true . . . ; that the action is based on a written instrument for the payment of money, and that said instrument is in his possession, and he therefore makes this verification pursuant to the provisions of the Revisal of 1905" is insufficient under this section because it does not state the grounds of belief, nor why the



party himself did not make the verification. *Miller v. Curl*, 162 N. C. 1, 77 S. E. 952.

When a verification to a complaint by the plaintiff's attorney does not substantially comply with this section, judgment by default for the want of an answer should not be entered. *Miller v. Curl*, 162 N. C. 1, 77 S. E. 952.

The object of this and the two preceding sections is to give the pleader a convenient substitute for the old bill of discovery in equity and to eliminate all issues of fact that the parties are not willing to raise under the sanctity of an oath. *Miller v. Curl*, 162 N. C. 1, 77 S. E. 952.

493.

The admission in evidence in a criminal prosecution of a pleading in contravention of the last clause of this section, is not ground for reversal unless there be substantial error. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.

495.

In this case the pleadings were held sufficient to determine the negligence of either of two connecting carriers in damaging a shipment of goods while in their possession. *Lyon v. R. R.*, 165 N. C. 143, 81 S. E. 1.

For additional notes on this section see Supplement 1913.

496.

While the trial judge is authorized in the exercise of his discretion to order that a pleading be made more definite, he may not direct the manner in which this may be done. *Hensley v. Furniture Co.*, 164 N. C. 148, 80 S. E. 154.

The extent of the discretion vested in the trial judge and the manner of its exercise discussed by Walker, J. in *Hensley v. Furniture Co.*, 164 N. C. 148, 80 S. E. 154.

For additional notes on this section see Supplement 1913.

500.

The rule that a private statute must be specially pleaded will not be allowed to prevail when a private statute relating to and effectually settling the matter in controversy has after due notice been formally brought to the attention of the Supreme Court. *Reid v. R. R.*, 162 N. C. 355, 78 S. E. 306.

501.

For notes on this section see Supplement 1913.

503.

For notes on this section see Supplement 1913.

506.

Where a demurrer to a complaint is interposed in good faith and overruled, the defendant is entitled to answer over. *Ayers v. Bailey*, 162 N. C. 209, 78 S. E. 66.

For additional notes on this section see Supplement 1913.

507.

Where the complaint is insufficient, and an amended complaint is allowed and filed which makes allegation sufficient to sustain the suit,

the amended complaint has the effect of superseding the first, and a demurrer to the complaint should not be sustained. *Zagier v. Zagier*, 167 N. C. 616, 83 S. E. 913.

Where the court has permitted the withdrawal of one of the parties, leaving the action to proceed singly as to the other, it may allow a proper amendment of the pleadings as to the remaining cause where the defendant has asked for no affirmative relief and his defense cannot be prejudiced. *Campbell v. Power Co.*, 166 N. C. 488, 82 S. E. 842.

A new and distinct cause of action is not allowable by amendment to the complaint and where the original complaint alleges a cause of action for libel, it may not be amended so as to maintain an action for damages arising from an alleged boycott by the defendant. *Supreme Council v. Grand Lodge*, 166 N. C. 221, 81 S. E. 408.

An amended complaint, though it is practically an additional cause of action, may be filed when it is so germane to the original cause of action that both may be considered in one action. *Pritchard v. R. R.*, 166 N. C. 532, 82 S. E. 875.

An amendment to a complaint allowed by the court before proceeding with the trial, which merely perfects the allegations therein made, is not objectionable as stating a new cause of action. *Steeley v. Lumber Co.*, 165 N. C. 27, 80 S. E. 963.

It is within the discretion of the trial court to permit amendments to the pleadings during the progress of the trial. *Tilghman v. R. R.*, 167 N. C. 163, 83 S. E. 315, 1090.

The allowance of an amendment is in the sound discretion of the judge below, and his action in refusing it is not reviewable. *Adickes v. Chatham*, 167 N. C. 681, 83 S. E. 748; *Cavanaugh v. Jarman*, 164 N. C. 372, 79 S. E. 673; *Cauley v. Dunn*, 167 N. C. 32, 83 S. E. 16.

An order allowing a plaintiff to amend his complaint within thirty days, with provision that if he fail either to file his complaint within the time allowed or pay the cost imposed as a condition, the action shall stand dismissed without further order, is an alternative or conditional judgment and void, leaving it open to the discretion of a succeeding judge to allow the amended pleading to be filed. *Lloyd v. Lumber Co.*, 167 N. C. 97, 83 S. E. 248.

For additional notes on this section see Supplement 1913.

## 509.

Where two or several plaintiffs join in their action to recover damages for mental anguish, a demurrer for misjoinder is good. *Cooper v. Express Co.*, 165 N. C. 538, 81 S. E. 743

For additional notes on this section see Supplement 1913.

## 511.

It is not within the discretion of the trial judge to order stricken out a part of an amended pleading simply because the statute of limitations was pleaded in it when the judge holding a former term of the court has unconditionally allowed the pleader further time in which to file the amended answer. *Hardin v. Greene*, 164 N. C. 99, 80 S. E. 413.

## 512.

The parties to a civil action are presumed to take notice of a general order made by the court of an extension of time allowed within which to file pleadings beyond that allowed by the statute, and this is especially true when one of the parties represents himself as attorney. *School v. Pierce*, 163 N. C. 424, 79 S. E. 687.



When the judge enlarges the time for filing the pleadings, the time is extended with the same force and effect as if the extended period had been originally enlarged by the statutes for filing the pleadings. *Hyder v. R. R.*, 167 N. C. 584, 83 S. E. 689.

For additional notes on this section see Supplement 1913

### 513.

It is too late after the trial is over and judgment is rendered, at a subsequent term, to ask the court to set aside a judgment because certain defenses were not made at the time of the trial. *Pritchard v. R. R.*, 166 N. C. 532, 82 S. E. 875.

The limitation as to time, in this section, applies, as a rule, to judgments which are in all respects regular, and does not obtain as to those which are taken contrary to the course and practice of the Court, as where the judgment was signed in a different county from the one in which the action was pending, without the consent of the complaining party. *Cox v. Boyden*, 167 N. C. 320, 83 S. E. 246.

A judgment should not be set aside for excusable neglect when it appears that it was for default of answer filed and the defendant has permitted term after term of court to pass, stating in his affidavit supporting his motion, as the ground for the relief, that he had had an erroneous impression of the plaintiff's name, and had repeatedly inquired of the clerk if the complaint had been filed in the case, giving the wrong name as that of the plaintiff, with information that it had been filed, etc. *McDowell v. Justice*, 167 N. C. 493, 83 S. E. 803.

When it appears that the defendant has had actual or constructive knowledge of an extension of time to file the complaint, and fails to file his answer within the time allowed, or to obtain an extension of time within which to do so or to file his defense bond, without showing any meritorious reason for his not having done so, his neglect is inexcusable. *School v. Pierce*, 163 N. C. 424, 79 S. E. 687.

Upon a motion to set aside a judgment for excusable neglect, the burden of proof is upon the movant to show a meritorious defense as well as that his neglect was excusable; but when he has failed to show the latter, it becomes immaterial as to whether he had a meritorious defence or not. *School v. Pierce*, 163 N. C. 424, 79 S. E. 687.

This section and the limitations established by it are properly held to apply when the judgment is otherwise in all respects regular, the court having jurisdiction of the parties, and does not extend to cases where no jurisdiction has ever been acquired over the moving party. *Massie v. Haney*, 165 N. C. 174, 81 S. E. 139.

A party has no right to abandon all active prosecution of his case simply because he has retained counsel to represent him in the court. He must bestow that care and attention upon it which a man of ordinary prudence usually gives to his important business. The laches of his attorneys in permitting a judgment by default to be taken therein against him is imputable to him. *McLeod v. Gooch*, 162 N. C. 122, 78 S. E. 4.

The fact that defendants are old and feeble, is no ground for relief when there is no finding that they are not of sound mind and they are defending the motion without the intervention of a guardian. *Pierce v. Eller*, 167 N. C. 672, 83 S. E. 758.

This section is not restricted to cases of "excusable neglect" but embraces cases where the judgment or other proceeding has been taken "through his mistake, inadvertence or surprise." These words are not mere surplusage, but mean entirely different things. *Mann v. Hall*, 163 N. C. 50, 79 S. E. 437.



A judgment may be set aside under this section, on motion of the party obtaining it where by reason of mistake, etc., it is for less than it should have been otherwise. *Mann v. Hall*, 163 N. C. 50, 79 S. E. 437.

On motion hereunder the facts found by the judge are conclusive and the Supreme Court can review only the question whether the facts so found constitute such mistake, etc., as would authorize setting aside the judgment or verdict. *Mann v. Hall*, 163 N. C. 50, 79 S. E. 437.

In *Mann v. Hall*, 163 N. C. 50, 79 S. E. 437, a judgment in favor of the plaintiff was set aside because of the mistake of his counsel in describing the lands contended for.

For statement of facts showing inexcusable neglect on the part of an attorney see *McLeod v. Gooch*, 162 N. C. 122, 78 S. E. 4.

For additional notes on this section see Supplement 1913.

515.

Where a complaint alleges that the plaintiff was ejected from a train at a certain station, and the proof is that he was ejected at another, but the record shows that there was no controversy as to place, the variation will not be deemed material. *Edwards v. R. R.*, 162 N. C. 278, 78 S. E. 219.

Cited but not construed (as 575), in *Lyon v. R. R.*, 165 N. C. 143, 81 S. E. 1.

For additional notes on this section see Supplement 1913.

516.

Cited but not construed (as 576), in *Lyon v. R. R.*, 165 N. C. 143, 81 S. E. 1.

For additional notes on this section see Supplement 1913.

518.

For notes on this section see Supplement 1913.

519.

When defendants have saved their right to trial by jury in apt time, such right is not waived by consenting to an order appointing one referee in the place of another. *Keerl v. Hayes*, 166 N. C. 553, 82 S. E. 861.

Parties to an action which has been referred under a compulsory order of the court, who except to the order, but agree that it may be signed out of the term and district, do not by such agreement lose their rights to a trial by jury. *Keerl v. Hayes*, 166 N. C. 553, 82 S. E. 861.

A motion for a compulsory reference should be made in an action before the jury has been impaneled, or the rights of a party thereto will be considered waived. *Peyton v. Shoe Co.*, 167 N. C. 280, 83 S. E. 487.

For additional notes on this section see Supplement 1913.

3. A compulsory reference is proper, when it involves the conflicting question of boundary. Such a reference, however, does not deprive the party of his right to have the issues tried by jury, where such right has not been waived or forfeited. *Keerl v. Hayes*, 166 N. C. 553, 82 S. E. 861.

522.

The proceedings before a court of a referee are judicial in their nature, and it is his duty to enter upon his report admissions of the



parties or of their attorneys in the progress of the investigation or hearing pertinent to the issues involved; and entries of this character do not require that there be further evidence of such admissions than the referee's statements thereof. *Fisher v. Toxaway Co.*, 165 N. C. 663, 81 S. E. 925.

524.

For notes on this section see Supplement 1913.

525.

The statement made of record by the trial judge in passing upon the report of the referee to whom the controversy had been referred, that he had heard the argument of counsel, examined and considered the record, the evidence, report and exceptions filed, before entering the order confirming the report, is conclusive on appeal, and not open to the exception of the appellant that he had failed to deliberate and pass upon an exception he had entered to the report. *Fisher v. Toxaway Co.*, 165 N. C. 663, 81 S. E. 925.

Where the report of a referee approved by the judge fails to find a material fact necessary to the determination of the controversy, the Supreme Court will remand the case to the end that the necessary facts be found. *French v. Richardson*, 167 N. C. 41, 83 S. E. 31.

Where the judge affirms the report of the referee it must be taken that he adopts his finding of fact, and it is not necessary that he should set out the evidence again. *S. v. Bailey*, 162 N. C. 583, 77 S. E. 701.

Exceptions to a report of a referee, supported by competent evidence and approved by the trial judge, are not reviewable on appeal. *Montcastle v. Wheeler*, 167 N. C. 258, 83 S. E. 469; *Simmons v. Groom*, 167 N. C. 271, 83 S. E. 471; *Lance v. Russell*, 165 N. C. 626, 81 S. E. 922; *McCullen v. Cheatham*, 163 N. C. 61, 79 S. E. 306.

The findings of fact of a referee, confirmed by the trial judge, are conclusive on appeal if there is any evidence to support them. *Hudson v. Morton*, 162 N. C. 6, 77 S. E. 1005.

For additional notes on this section see Supplement 1913.

527.

For notes on this section see Supplement 1913.

529.

For notes on this section see Supplement 1913.

531.

Where a guardian *ad litem* is appointed and made a party at the trial term of the action, without change of pleading, it does not give the opposing party a legal right to continue the cause. *Watson v. R. R.*, 164 N. C. 176, 80 S. E. 175.

Ordinarily the ruling of the judge upon a motion for continuance is a matter of discretion and not reviewable. *Watson v. R. R.*, 164 N. C. 176, 80 S. E. 175.

The motion for a continuance is addressed to the discretion of the court, and the ruling of the court, denying the motion, is not reviewable, unless there has been an abuse of discretion. *S. v. Daniels*, 164 N. C. 464, 79 S. E. 953.

The refusal by the trial judge of a continuance upon the ground of the inability of a party to procure certain witnesses is not reviewable on appeal, in the absence of any abuse of discretion by the court in such matters. *S. v. English*, 164 N. C. 497, 80 S. E. 72.

## 534.

For notes on this section see Supplement 1913.

## 535.

**Generally.**—The manner in which the judge is to state the law and evidence, must necessarily be left to a great extent to his sound discretion and good sense. But he must charge on the different aspects presented by the evidence and give the law applicable thereto. *Blake v. Smith*, 163 N. C. 274, 79 S. E. 596.

The trial judge should not charge the jury upon an aspect of the case which is not supported by the evidence. *Craig v. Stewart*, 163 N. C. 531, 79 S. E. 1100.

Where the evidence is conflicting, it is reversible error for the judge to instruct the jury to "take the case and settle it as between man and man" without further charge. *Blake v. Smith*, 163 N. C. 274, 79 S. E. 596.

Where the answer to an issue by the jury is sufficient to sustain a judgment against appellant rendered in the lower court, instructions on another issue, even if erroneous, are harmless. *Hodges v. Wilson*, 165 N. C. 323, 81 S. E. 340.

Error in the charge of the judge upon an issue answered in appellant's favor is cured by the verdict, and is harmless. *Carter v. R. R.*, 165 N. C. 244, 81 S. E. 321.

While the court may instruct the jury that there is no direct evidence of the conclusion argued, it is reversible error to charge them to pay no attention to the argument. *State v. Lee*, 166 N. C. 250, 80 S. E. 977.

It is error for the judge to charge the jury that they cannot at all consider the omission of the solicitor to produce a witness for the State. *State v. Harris*, 166 N. C. 243, 80 S. E. 1067.

The use of the word "satisfied" does not intensify the proof required to entitle the plaintiffs to the verdict. *Sigmon v. Shell*, 165 N. C. 582, 81 S. E. 739.

Upon the consideration to be given by the jury to the testimony of interested witnesses, *Herndon v. R. R.*, 162 N. C., is approved and the charge of the judge is recommended as the correct form. *Ferebee v. R. R.*, 167 N. C. 290, 83 S. E. 360.

The expression, "if the jury believe the evidence" preliminary to a direction as to how they should find upon such belief, is inexact and should be eschewed by the judges, though when used, it is not ground for a new trial, unless clearly prejudicial. *S. v. Blackwell*, 162 N. C. 672, 78 S. E. 316; *Holt v. Wellons*, 163 N. C. 124, 79 S. E. 450.

The Supreme Court, acting under its discretionary powers, may order the charge to be sent up when it thinks that a clear miscarriage of justice may thereby be prevented. *Hornthall v. R. R.*, 167 N. C. 627, 82 S. E. 830.

For an extended discussion of this section by Walker, J., see *Speed v. Perry*, 167 N. C. 122, 83 S. E. 176.

For a clear and elaborate charge in a murder trial, in which the plea was self-defense, see *S. v. Blackwell*, 162 N. C. 672, 78 S. E. 316.

Unless an exception to an instruction given by the trial court specify the errors therein, it will not be considered on appeal. *Hendricks v. Ireland*, 162 N. C. 523, 77 S. E. 1011.

For additional notes on this section see Supplement 1913.

**Charge presumed correct, when.**—Where the charge of the judge is not set out in the record, it will be presumed to have been correctly given. *Smith v. R. R.*, 162 N. C. 29, 77 S. E. 966; *Hornthall v. R. R.*, 167 N. C. 627, 82 S. E. 830.



**Charge in general terms.**—Where the charge of the judge to the jury, construed as a whole, is correct, and the part thereof objected to, when considered with the context, is not erroneous or misleading, it will not be held as reversible error. *Hodges v. Wilson*, 165 N. C. 323, 81 S. E. 340.

The failure of the trial judge to charge upon particular phases of the controversy is not alone sufficient to be held for reversible error. The appellant should offer prayers for special instruction covering the matter, and except and appeal from the refusal of the court to give them. *Tillery v. Benefit Society*, 165 N. C. 262, 80 S. E. 1068; *Carter v. Reaves*, 167 N. C. 131, 83 S. E. 248.

Where the charge of the court upon the measure of damages in an action to recover them states general but correct principles of law applicable to the issue, an exception that he did not sufficiently instruct the jury will not be sustained, it being required of the appellant that he should have tendered special prayers containing the specific instructions he desired to be given. *Owenby v. R. R.*, 165 N. C. 641, 81 S. E. 997.

Though instruction be not addressed to specific issues, yet where the issues are simple and in view of the other parts of the charge, they do not appear to have mislead the jury, a new trial will not be granted for the error. *Craig v. Stewart*, 163 N. C. 531, 79 S. E. 1100.

For a charge held correct as a whole, in a suit alleging negligence in the running of a train without a headlight, see *McNeal v. R. R.*, 167 N. C. 390, 83 S. E. 704.

**Expressions of opinion.**—A charge by the judge that the jury might consider "the interest that the parties have in your verdict," is not an expression of opinion hereunder, though the only parties testifying who had an interest were the plaintiff, her husband and son. *Herdon v. R. R.*, 162 N. C. 317, 78 S. E. 287.

The statement made by the judge in his charge to the jury in this case, that all of the witnesses were of good character, while inadvertent, was impartial in its application, and not held for reversible error. *Bowden v. English*, 165 N. C. 97, 80 S. E. 979.

An objection to the remark of the judge cannot be considered when it was not made in the hearing of the jury. *Yellowday v. Perkinson*, 167 N. C. 144, 83 S. E. 341.

This section forbids any expression of opinion by the judge in the hearing of the jury at any time during the trial, and includes any fact in evidence or any legitimate inference of fact arising on the testimony which is material and relevant to the issue. *State v. Harris*, 166 N. C. 243, 80 S. E. 1067.

The remark of the Court that the counsel had "testified when he was not sworn" was held in this as a reflection upon the counsel and prejudicial error. *S. v. Lee*, 166 N. C. 250, 80 S. E. 977.

Where a deed absolute on its face is alleged to have been obtained by threats and undue influence, and the plaintiffs contend that it should have been a mortgage, it is reversible error for the trial court, in instructing the jury, to tell them that if the plaintiff's contention be true it would stigmatize the defendants as being guilty of a "base and dirty fraud." *Ray v. Patterson*, 165 N. C. 512, 81 S. E. 773.

An expression by the judge that "this witness is too smart" is an expression of opinion by the judge upon the credibility of the witness, and is forbidden by this section. *Chance v. Ice Co.*, 166 N. C. 495, 82 S. E. 845.

This section applies to any expression of opinion by the judge in the hearing of the jury at any time during the trial. *S. v. Cook*, 162 N. C. 586, 77 S. E. 759.

The judge's error in expressing an opinion is not corrected by his telling the jury that it is their exclusive province to determine on the sufficiency or insufficiency of the evidence, and that they are not bound by his opinion in regard thereto. *S. v. Cook*, 162 N. C. 586, 77 S. E. 759.

For charge held to be expression of opinion under the circumstances of the case, see *May v. Manfg. Co.*, 164 N. C. 262, 80 S. E. 380.

For a case in which the judge's remarks were held to be an expression of opinion, see *Speed v. Perry*, 167 N. C. 122, 83 S. E. 176.

**Stating contentions of parties.**—Where the judge has given a general statement of the defendant's contention under one issue containing some matter applicable only to a different one, it will not be necessarily held for error when it appears that he gave legal significance to the evidence as it correctly related to each of the several issues. *Bird v. Lumber Co.*, 163 N. C. 162, 79 S. E. 448.

Appellant should call to the attention of the trial judge, at the time, an alleged erroneous statement to the jury of his contentions, to afford him an opportunity to correct it; for otherwise it will not be considered on appeal. *Ferebee v. R. R.*, 167 N. C. 290, 83 S. E. 360; *State v. Lance*, 166 N. C. 411, 81 S. E. 1092; *S. v. Blackwell*, 162 N. C. 672, 78 S. E. 316; *S. v. Fogleman*, 164 N. C. 458, 79 S. E. 879.

The Court is not called on to state the contentions of counsel for the prisoner in the particular manner and with the inferences which counsel desires. *State v. Lance*, 166 N. C. 411, 81 S. E. 1092.

Where a part of a charge of the court to the jury, excepted to, does not purport to be a statement of the law, but only the contentions of the adversary party, it will not be held for error on appeal. *Lucas v. R. R.*, 165 N. C. 264, 80 S. E. 1076.

**Peremptory Instructions.**—The judge may direct the verdict in certain cases where the evidence is uncontradicted and believed by the jury to be true, and only one inference can be drawn from it. But it is very rare that a verdict can be properly directed, where the sole issue is one of possession of land, and much evidence is offered on each side. *Barfield v. Hill*, 163 N. C. 262, 79 S. E. 677.

A verdict cannot be directed in favor of a plaintiff where the evidence is conflicting. *Forsyth v. Oil Mill*, 167 N. C. 179, 83 S. E. 320.

A requested instruction directing an answer by the jury to an issue of negligence if they believe the evidence, withdraws from their consideration everything except the credibility of the evidence, and is erroneous. *Alexander v. Statesville*, 165 N. C. 527, 81 S. E. 763.

Where different inferences may be drawn by the jury upon the evidence in the case, the Court may not, as a matter of law, direct a verdict. *Alexander v. Statesville*, 165 N. C. 527, 81 S. E. 763.

Where there is no conflict in the evidence in a civil action, or the facts are virtually admitted, the court may direct a verdict as a matter of law. *Riley v. Carter*, 165 N. C. 334, 81 S. E. 414.

### 536.

This provision of the law is mandatory in both civil and criminal cases. The judge *must* comply with the request. *S. v. Black*, 162 N. C. 637, 78 S. E. 210.

Upon a failure of the judge to put his charge in writing, upon request at or before the close of the evidence, a new trial will be granted upon exception properly taken. *S. v. Black*, 162 N. C. 637, 78 S. E. 210.



See notes to Section 538. For additional notes on this section see Supplement 1913.

**538.**

The presiding judge is not required to dissect a prayer for instruction, but may consider it as a whole; and when erroneous in part may refuse the entire prayer. *S. v. Greer*, 162 N. C. 640, 78 S. E. 310.

When material evidence has been introduced presenting or tending to present a definite legal position or having definite legal value in reference to the issues or any of them, and a specific prayer for instruction concerning it is properly preferred which correctly states the law applicable, such prayer must be given, and unless this is substantially done either in direct response to the prayer or in the general or some other portion of the judge's charge, the failure will constitute reversible error. *Marcom v. R. R.*, 165 N. C. 259, 81 S. E. 290.

It is not error for the trial judge to give, in his own language, a requested prayer for instruction, if he substantially gives it without weakening its force. *Carter v. R. R.*, 165 N. C. 244, 81 S. E. 321.

Where the jury is fully instructed, no error not to give special instructions. *S. v. Blackwell*, 162 N. C. 672, 78 S. E. 316.

Where it does not appear from the record that there was any evidence, or aspect of the controversy, which would make a prayer requested for special instruction applicable, the refusal of the trial court to so instruct will not be held for error. *Pharr v. Commissioners*, 165 N. C. 523, 81 S. E. 782.

A party to an action must obtain leave from the trial judge to submit prayers for special instruction after the argument has commenced, and from his refusal to consider them when so tendered, no appeal will lie. *State v. Claudius*, 164 N. C. 521, 80 S. E. 261.

The refusal of the trial judge to give special instructions requested is not reviewable on appeal when it appears that they were submitted to the judge after the close of the evidence. *Barringer v. Deal*, 164 N. C. 246, 80 S. E. 161.

In the absence of a special prayer, the omission to charge the jury as to the effect of certain evidence, there being no affirmative error, is not ground for reversal, even if the party is entitled to the instruction. *Pate v. Bank*, 162 N. C. 508, 77 S. E. 230.

When exceptions are taken to the refusal of the trial judge to give instructions, which were duly requested, it must appear of record that these instructions were not substantially given in the charge. *Hornthall v. R. R.*, 167 N. C. 627, 82 S. E. 830.

For additional notes on this section see Supplement 1913.

**539.**

Upon motion to nonsuit the evidence is considered in the light most favorable to the plaintiff, and if there is, in that view, more than a scintilla of evidence, and such as rises above the plane of mere conjecture, and is reasonably sufficient to prove the essential facts, it is proper to refuse the nonsuit. *Smith v. R. R.*, 162 N. C. 29, 77 S. E. 966.

When a judgment of nonsuit is granted upon the evidence, the evidence is viewed on appeal in the light most favorable to the plaintiff. *Hall v. Electric Railway*, 167 N. C. 284, 83 S. E. 351.

A requested instruction that the judge charge the jury to answer the issues in his favor if they believe the evidence, is equivalent to a demurrer or a motion to nonsuit; and in such instances the evidence should be construed as on such a motion. *Smith v. Holmes*, 167 N. C. 561, 83 S. E. 833.

The rule that the evidence is to be considered in the light most favorable to the plaintiff upon a motion to nonsuit applies to his own testimony though material and conflicting. *Christman v. Hilliard*, 167 N. C. 4, 82 S. E. 949.

When there is sufficient evidence, viewed in the light most favorable to the plaintiff, to sustain a verdict in his favor, a motion as of nonsuit will not be granted. *Hodges v. Wilson*, 165 N. C. 323, 81 S. E. 340.

An appeal from a judgment of nonsuit taken upon the ruling of the trial court upon admissibility of evidence not determinative of the controversy will not be considered. *White v. Harris*, 166 N. C. 227, 81 S. E. 687.

A motion to nonsuit upon the evidence is properly allowed when the plaintiff's own evidence discloses such contributory negligence as bars his recovery. *Dunnevant v. R. R.*, 167 N. C. 232, 83 S. E. 347.

Where the only evidence to sustain the cause of action alleged by the plaintiff is incompetent, but erroneously admitted, and an appeal has been taken by the defendant for the refusal of judgment of nonsuit thereon, the Supreme Court will not overrule the trial court and grant the nonsuit, but will order a new trial. *Morgan v. Benefit Society*, 167 N. C. 262, 83 S. E. 479.

Cited but not construed in *Lloyd v. R. R.*, 166 N. C. 24, 81 S. E. 1003; *Mott v. R. R.*, 164 N. C. 367, 79 S. E. 867.

For additional notes on this section see Supplement 1913.

#### 540.

See notes to Section 541. For additional notes on this section see Supplement 1913.

#### 541.

Findings of fact by a court, under an agreement of the parties, supported by competent evidence, or evidence to the admission of which no objection has been duly made, are conclusive on appeal. *Gilmore v. Smathers*, 167 N. C. 440, 83 S. E. 823; *Eley v. R. R.*, 165 N. C. 78, 80 S. E. 1064.

The judge's findings of fact are conclusive, unless proper exception is made in apt time that there is no evidence to support his findings or any one or more of them. *Buchanan v. Clark*, 164 N. C. 56, 80 S. E. 424.

Where the burden of proof is upon the plaintiff to establish the issue, his finding for the defendant thereon is not reviewable, for the plaintiff is required to satisfy him with the evidence that the issue should be answered in his favor. *Eley v. R. R.*, 165 N. C. 78, 80 S. E. 1064.

It was within the power of the judge, under the terms of submission to him, in this case, to correct the finding as to the amount due, and if necessary the pleadings would be amended in this court to conform to the finding. *Corporation Commission v. Bank*, 164 N. C. 357, 79 S. E. 308.

For additional notes on this section see Supplement 1913.

#### 542.

An objection to an answer of a witness to a question, which is made in general terms, will not be sustained on appeal when it appears that parts of the answer were competent as evidence. *Smathers v. Hotel Co.*, 167 N. C. 469, 83 S. E. 844.

Where it appears from a perusal of the record that material evidence made incompetent by statute for reasons of public policy, has



been admitted and allowed to affect the result, the judge's failure to exclude it must be held for reversible error, whether exception has been noted or not. *Hooper v. Hooper*, 165 N. C. 605, 81 S. E. 933.

An assignment of error must be based upon an exception duly taken during the trial of an action or the hearing of a motion, and the record must show the exception; an assignment of error, unsupported by an exception, will be disregarded. *McLeod v. Gooch*, 162 N. C. 122, 78 S. E. 4.

For additional notes on this section see Supplement 1913.

544.

For notes on this section see Supplement 1913.

546.

For notes on this section see Supplement 1913.

548.

When the issues submitted to the jury by the court are sufficient to present the case in all its essential aspects, the refusal of the court to submit the issues tendered by the appellant will not be held as error. *Hodges v. Wilson*, 165 N. C. 323, 81 S. E. 340; *Hendricks v. Ireland*, 162 N. C. 523, 77 S. E. 1011; *Insurance Co. v. Bonding Co.*, 162 N. C. 384, 78 S. E. 430.

For a party to an action to take advantage on appeal of the submission of an issue claimed by him to have been improper, he should have excepted to the submission of the issue and the evidence tending to establish it on the trial. *Holton v. Moore*, 165 N. C. 549, 81 S. E. 779.

Where the defendant fails to tender such issues as he deems essential, he cannot assign as error the failure of the court to submit such issues. *McCall v. Galloway*, 162 N. C. 353, 78 S. E. 429.

It is not error for the trial judge to refuse to submit an issue upon the question of contributory negligence when such has not been tendered by the defendant. *R. R. v. Baird*, 164 N. C. 253, 80 S. E. 406.

For additional notes on this section see Supplement 1913.

549.

In this case an issue, "are the defendants indebted to the plaintiff, and, if so, in what amount," was held sufficient. *Lumber Co. v. Manufacturing Co.*, 162 N. C. 395, 78 S. E. 284.

For additional notes on this section see Supplement 1913.

550.

A special verdict is defective which contains merely a recital of evidence of a circumstantial nature. *State v. Fenner*, 166 N. C. 247, 80 S. E. 970.

A special verdict which refers to the decision of the judge any fact or inference of fact necessary to the determination of the issue is insufficient in law, and will be set aside. *State v. Allen*, 166 N. C. 265, 80 S. E. 1075.

553.

For notes on this section see Supplement 1913.

554.

For additional notes on this section see Supplement 1913.

1. Agreement of counsel that the clerk should take the verdict of the

jury and judgment be mailed to the judge to be signed as out of term is discussed and disapproved, though not held for error. *Barger v. Alley*, 167 N. C. 362, 83 S. E. 612.

By agreement of counsel, the clerk of the Superior Court can represent the judge in taking the verdict of the jury; and when so done, and counsel representing one of the parties are not present, owing to the failure of the deputy clerk to notify them as he had promised to do, the validity of the verdict is not thereby affected, especially when no prejudice to the complaining party has been shown. *Barger v. Alley*, 167 N. C. 362, 83 S. E. 612.

2. This section does not require that the judge shall reduce the exceptions to writing himself, but merely that they shall be reduced to writing and entered on his minutes. *Buckner v. R. R.*, 164 N. C. 201, 80 S. E. 225.

Where exception is taken to the ruling out of an answer to a question asked a witness in the trial of a cause, it must in some way be made to appear what the expected answer would have been. *State v. Lane*, 166 N. C. 333, 81 S. E. 620.

An exception to the charge of the court must be to a specific proposition wherein error is alleged and pointed out, and an exception contained in an excerpt from the charge, containing several propositions, is not sufficiently definite for consideration on appeal. *State v. Cameron*, 166 N. C. 379, 81 S. E. 748.

When the exceptions are taken to large portions of the charge, which are, at least, partially correct, the exceptions must fail. *Sigmon v. Shell*, 165 N. C. 582, 81 S. E. 739.

Objections to a mass of evidence, some of which is incompetent and some competent, should specify only the incompetent evidence, or the exception will not be considered on appeal. *S. v. English*, 164 N. C. 497, 80 S. E. 72.

Where there is a single assignment of error to several rulings of the trial court, and one of them is correct, the assignment must fail. *Buie v. Kennedy*, 164 N. C. 290, 80 S. E. 445.

An exception must be made and noted to the ruling of the court, if objected to, and where an objection is made to the exclusion of evidence upon the trial of the case and the witness is ordered to stand aside, with permission to the appellant to recall and further question him on the point, and the witness is not recalled under the permission granted, and no final ruling is made, there is nothing upon which an exception can be based, and the matter is not reviewable on appeal. *S. v. English*, 164 N. C. 497, 80 S. E. 72.

Briefs which merely state, with reference to the exceptions taken of record, "Exception No. 1. This question and answer are incompetent," etc., afford no assistance to the court. They are merely pass briefs, and do not conform to the rules. *Jones v. R. R.*, 164 N. C. 392, 80 S. E. 408.

Where a question asked a witness is competent, and the answer is not responsive, and incompetent, the exception should be to the answer and not to the question; the procedure being upon motion to strike out the answer, or that the jury be instructed to disregard it. *Hodges v. Wilson*, 165 N. C. 323, 81 S. E. 340.

When exception is taken to the exclusion of a question asked a witness, it must in some way be made to appear what the answer to the question would have been, so that the court may determine whether its exclusion was prejudicial to the appellant. *Steeley v. Lumber Co.*, 165 N. C. 27, 80 S. E. 963.



Where evidence is admissible for purposes of corroboration only, exception that it was not confined to the purpose should be made upon a refusal by the court to do so at the request of the appellant duly made, or it will not be considered on appeal. *S. v. English*, 164 N. C. 497, 80 S. E. 72.

Exceptions made upon the trial to the effect of evidence and not to its competency will not be favorably considered on appeal, when the charge is not excepted to or set out in the record. *Miller v. Telegraph Co.*, 167 N. C. 315, 83 S. E. 482.

4. While a conflict in a verdict on essential and determinative matters will vitiate it, yet the verdict should be liberally and favorably construed with a view to sustaining it; and to obtain a proper apprehension of its meaning, resort may be had to the pleadings, evidence, and the charge of the court. *Donnell v. Greensboro*, 164 N. C. 330, 80 S. E. 377.

When there is sufficient evidence in law to support the finding, the Supreme Court will not review the ruling of the trial judge upon a motion to set aside a verdict because it is against the weight of the evidence, except where it clearly appears that there has been a gross abuse of his discretion. *Pender v. Insurance Co.*, 163 N. C. 98, 79 S. E. 293; *Pruitt v. R. R.*, 167 N. C. 246, 83 S. E. 350; *Johnson v. R. R.*, 163 N. C. 431, 79 S. E. 690; *Trust Co. v. Ellen*, 163 N. C. 45, 79 S. E. 263.

If the jury have returned a verdict contrary to the very truth of the matter, the only remedy is by motion in the court below to set it aside. The Supreme Court has no jurisdiction to reverse it or modify it for that reason. *S. v. Blackwell*, 162 N. C. 672, 78 S. E. 316.

The objection that there is not sufficient evidence to sustain a conviction cannot be entertained when made for the first time after verdict. *S. v. White*, 162 N. C. 615, 77 S. E. 999.

The power of a judge of the Superior Court to set aside a verdict is confined to the term wherein the verdict was rendered, except by consent of the parties expressed or implied. *Decker v. R. R.*, 167 N. C. 26, 83 S. E. 27.

A motion for a new trial upon the grounds of newly discovered evidence will only be granted when it is very probable that *substantial injustice* has been done by reason of the *unavoidable failure* to produce the evidence upon the trial, and when also it is probable that upon a new trial a different result will be reached. *Warwick v. Taylor*, 163 N. C. 68, 79 S. E. 286. For other motions for new trials upon the ground of newly discovered evidence, see *Johnson v. R. R.*, 163 N. C. 431, 79 S. E. 690; *Steeley v. Lumber Co.*, 165 N. C. 27, 80 S. E. 963; *Carson v. Insurance Co.*, 165 N. C. 135, 80 S. E. 1080; *Boyd v. Leatherwood*, 165 N. C. 614, 81 S. E. 1025.

555.

For notes on this section see Supplement 1913.

556.

Where a party moves to set aside a judgment for irregularity or excusable neglect, he should make it appear that he has a meritorious defense. *Miller v. Curl*, 162 N. C. 1, 77 S. E. 952.

For additional notes on this section see Supplement 1913.

1. See notes to subdivision 4.

2. See notes to subdivision 4.

3. See notes to subdivision 4.

4. The plaintiff is entitled to judgment by default final upon an un-

verified complaint, when the defendant has not filed the undertaking required by Section 453, nor procured leave to defend without giving the same (Section 454). *Patrick v. Dunn*, 162 N. C. 19, 77 S. E. 995.

557.

Upon a judgment by default, the cause of action is admitted, and the plaintiff is entitled to recover under the writ of inquiry, at least nominal damages. *Lumber Co. v. Furniture Co.*, 167 N. C. 565, 83 S. E. 801.

For additional notes on this section see Supplement 1913.

560.

For notes on this section see Supplement 1913.

563.

For notes on this section see Supplement 1913.

565.

For notes on this section see Supplement 1913.

570.

It is proper for the judgment to require the return of the property, if to be had, and if not, then for its value as assessed by the jury, and damages for deterioration and detention. *Hendricks v. Ireland*, 162 N. C. 523, 77 S. E. 1011.

For additional notes on this section see Supplement 1913.

573.

Amended, see Supplement 1913.

The so-called doctrine of relation was originated in rules of court and enacted afterwards into statute in order to place all parties obtaining judgments against a common debtor at same term upon an equality. *McKinney v. Street*, 165 N. C. 515, 81 S. E. 757.

A judgment will not be considered to relate to the first day of the term for the purpose of giving priority over a conveyance to an innocent purchaser for value and without notice. *McKinney v. Street*, 165 N. C. 515, 81 S. E. 757.

574.

For notes on this section see Supplement 1913.

579.

For notes on this section see Supplement 1913.

584.

Upon motion in the Superior Court for a *recordari* to a justice's court, upon the ground of excusable neglect in perfecting the appeal, the burden of proof is on the movant to show that his neglect was excusable as well as that he had a meritorious defence. *Hunter v. R. R.*, 163 N. C. 281, 79 S. E. 610.

Upon petition for a writ of *recordari* when the judge finds that appellant has been guilty of laches in not giving the legal notice of appeal required by Sections 1491 and 1492, and otherwise neglectful, in failing to look after his appeal, and refuses to grant the writ, his judgment will not be disturbed in the Supreme Court. *Tedder v. Deaton*, 167 N. C. 479, 83 S. E. 616.



Where the Supreme Court has set aside an order of the Superior Court granting a *recordari* to a justice's court for that the affidavit and petition did not set out a meritorious defence, it is in the sound discretion of the Superior Court judge to permit the movant to file additional affidavits for the purpose of showing that the defence relied on was meritorious. *Hunter v. R. R.*, 163 N. C. 281, 79 S. E. 610.

For additional notes on this section see Supplement 1913.

587.

An appeal in ordinary form will not lie from proceedings in *habeas corpus*. *In re Wiggins*, 165 N. C. 457, 81 S. E. 626.

Where there is a plea in bar, it presents an exception to the general rule, which requires the entire case to be passed upon before the court will consider the appeal. *Bethel v. McKinney*, 164 N. C. 71, 80 S. E. 162.

In the absence of findings of fact it will be presumed that the judge found such facts as would support his ruling. Error is not presumed, but the appellant must show it, the burden of doing so being upon him. *McLeod v. Gooch*, 162 N. C. 122, 78 S. E. 4.

For an appellant to be entitled to have his case heard in the Supreme Court as a matter of right, he must conform to the rules and regulations respecting appeals. *Hawkins v. Telegraph Co.*, 166 N. C. 213, 81 S. E. 161.

An appeal from an order of the lower court permitting an amendment to a pleading is premature and will be dismissed in the Supreme Court. *Supreme Council v. Grand Lodge*, 166 N. C. 221, 81 S. E. 408.

An appeal will not lie from the refusal of the trial court to dismiss an action, the same being premature; nor by one of several defendants, for then the appeal will be fragmentary. The practice is for the movant to enter an exception which will preserve his position in the event of an adverse judgment in the lower court. *Griffin v. Cupp*, 167 N. C. 96, 83 S. E. 161.

An appeal from the refusal of the trial judge to dismiss an action for want of proper service of process is premature; the procedure being upon exception entered and appeal from final judgment if adverse to the movant. *Gouge v. Bennett*, 166 N. C. 238, 81 S. E. 1065.

An appeal from the construction of a deed to standing timber, reserving the question of alleged trespass by reason of wrongful cutting of timber below the sizes specified and conveyed, is fragmentary and will be dismissed. *Gilbert v. Shingle Co.*, 167 N. C. 286, 83 S. E. 337.

For additional notes on this section see Supplement 1913.

588.

For notes on this section see Supplement 1913.

589.

For notes on this section see Supplement 1913.

590.

The time for service of notice of appeal from a judgment rendered out of term, begins to run when the judgment reaches the office of the clerk. *Fisher v. Fisher*, 164 N. C. 105, 80 S. E. 395.

On appeal in *habeas corpus* proceedings a judgment to transfer the custody of the child to the mother is suspended on giving the bond required by this section and Section 593. *Page v. Page*, 166 N. C. 90, 81 S. E. 1060.

## 591.

Recitals in the appellant's exceptions not set out as a part of the statement of case on appeal settled by the judge will not be considered. *State v. McKenzie*, 166 N. C. 290, 81 S. E. 301.

The requirements which entitle an appellant to have his case reviewed cannot be excused because the failure to observe them is due to the negligence of the counsel. *State v. Goodlake*, 166 N. C. 434, 81 S. E. 1008.

The requirements of the rule of the Supreme Court, that the evidence must appear in the case on appeal in narrative form, cannot be waived by the parties. *Bank v. Fries*, 162 N. C. 516, 77 S. E. 678.

Where by order of the trial judge in settling a case on appeal, the stenographer's notes of the trial are set out as part thereof, in violation of the rule of the Supreme Court, the cause will be remanded, that a case on appeal be correctly stated. *Fisher v. Lumber Co.*, 162 N. C. 531, 78 S. E. 286.

Any agreement for extension of time to serve case or counter-case on appeal must be in writing, or an agreement to that effect must appear of record, to be recognized in the Supreme Court. *S. v. Black*, 162 N. C. 637, 78 S. E. 210.

The Supreme Court will not undertake to settle disputes between counsel as to their oral agreement; and one party may not claim an extension of time by oral agreement, for the service of his counter-case, when it is denied by the other party that such an agreement was made. *S. v. Black*, 162 N. C. 637, 78 S. E. 210.

See notes to Section 590. For additional notes on this section see Supplement 1913.

## 592.

Where two parties on the same side of a case take separate appeals, yet are not antagonistic and present exactly the same question, it is not necessary that two records be sent up. *Pope v. Lumber Co.*, 162 N. C. 208, 78 S. E. 65; *Hagaman v. Bernhardt*, 162 N. C. 381.

For additional notes on this section see Supplement 1913.

## 593.

On appeal in *habeas corpus* proceedings a judgment to transfer the custody of the child to the mother, is suspended on giving the bond required by this section. *Page v. Page*, 166 N. C. 90, 81 S. E. 1060.

Providing an appeal bond, if left to counsel, is a duty devolved on him not as counsel, but as agent of appellant, and his neglect is the neglect of the principal. *Lunsford v. Alexander*, 162 N. C. 528, 78 S. E. 275.

For case dismissed for failure to file appeal bond, see *Lunsford v. Alexander*, 162 N. C. 528, 78 S. E. 275.

See notes to Section 730.

## 597.

For notes on this section see Supplement 1913.

## 598.

See notes to Section 730.

For additional notes on this section see Supplement 1913.

## 602.

An appeal duly taken and regularly prosecuted operates as a stay



of all proceedings in the trial court, relating to the issues included therein, until the matters are determined in the Supreme Court. *Pruett v. Power Co.*, 167 N. C. 598, 83 S. E. 830.

604.

For notes on this section see Supplement 1913.

605.

Cited but not construed in *Kenney v. R. R.*, 166 N. C. 566, 82 S. E. 849.  
For notes on this section see Supplement 1913.

607.

Any determination by the magistrate of an incidental question involved in the action, though not directly appealed from, is, when relevant and necessary, to be considered and determined by the appellate court. *White v. Peanut Co.*, 165 N. C. 132, 81 S. E. 134.

It would give rise to endless complications and seriously tend to impair their usefulness to hold that every adverse ruling made by justices and the reasons for it would estop the party affected unless he then and there excepted and appealed. *White v. Peanut Co.*, 165 N. C. 132, 81 S. E. 134.

When two insurance companies are sued for the payment of a matured policy and judgment is rendered against both of them, with appeal to the Superior Court by only one, it is error for the trial judge to order that the other defendant be made a party in the court, as its presence is unnecessary. *Morgan v. Benefit Society*, 167 N. C. 262, 83 S. E. 479.

For additional notes on this section see Supplement 1913.

608.

See notes to Section 607. For additional notes on this section see Supplement 1913.

609.

See notes to Section 607. For additional notes on this section see Supplement 1913.

610.

For notes on this section see Supplement 1913.

613.

For notes on this section see Supplement 1913.

614.

The appeal of a guardian *ad litem* in partition proceedings from an order of a clerk overruling his demurrer carries the entire case into the Superior Court, and vests it with full jurisdiction of the cause, under this section. *Thompson v. Rospigliossi*, 162 N. C. 145, 77 S. E. 113.  
For additional notes on this section see Supplement 1913.

615.

For notes on this section see Supplement 1913.

616.

Cited but not construed in *Turlington v. Aman*, 163 N. C. 555, 79 S. E. 1102.

618.

For notes on this section see Supplement 1913.

620.

For notes on this section see Supplement 1913.

622.

For notes on this section see Supplement 1913.

624.

Cited but not construed in *Williams v. Dunn*, 163 N. C. 206, 79 S. E. 512.

For additional notes on this section see Supplement 1913.

625.

As this section prescribes that an execution against the person can be issued only after a return of an execution against the property, unsatisfied, in whole or in part, a motion that an order for it be inserted in the judgment should be denied as being premature. *Turlington v. Aman*, 163 N. C. 555, 79 S. E. 1102.

This section awards an execution against the person after execution against property has been returned unsatisfied in whole or in part. *Michael v. Leach*, 166 N. C. 223, 81 S. E. 760.

For a discussion of the procedure under this section, see *Turlington v. Aman*, 163 N. C. 555, 79 S. E. 1102.

For additional notes on this section see Supplement 1913.

627.

For notes on this section see Supplement 1913.

629.

The interest of a grantee in a timber deed is subject to execution and sale under a judgment obtained against him by his creditor, and the purchaser at such a sale has the right to cut and remove the timber upon the terms and conditions and within the period specified in the deed. *Williams v. Parsons*, 167 N. C. 529, 83 S. E. 914.

For additional notes on this section see Supplement 1913.

1. An interest in real estate, held by a debtor only for the purpose of sale and distribution of the proceeds in trust, is not subject to levy and sale under this section. *Johnson v. Whilden*, 166 N. C. 104, 81 S. E. 1057.

638.

The trial judge has the right to ignore a prayer for special instructions when not reduced to writing, and an exception to his doing so will not be considered on appeal. *Linker v. Linker*, 167 N. C. 651, 83 S. E. 736.

641.

Amended, see Supplement 1913.

For a case in which a sale of three separate tracts of land as a whole, when one would have been enough to satisfy the execution, accompanied by circumstances of fraud, oppression and unfairness, were held to invalidate the sale, see *Williams v. Dunn*, 163 N. C. 206, 79 S. E. 512.

The requirement of this section as to advertising sale is directory



only, and when not followed will not avoid sale as against a stranger without notice of the irregularity. Nor can it be assailed collaterally. *Williams v. Dunn*, 163 N. C. 206, 79 S. E. 512.

Where the requirements of this section and Section 642 as to advertisement and notice have not been complied with and the land sells far below its value, the sale will not be permitted to stand unless the strict rights of the purchaser require it. *Williams v. Dunn*, 163 N. C. 206, 79 S. E. 512.

The sheriff acts in some respects as the agent of both the judgment debtor and creditor, and should exercise a fair discretion to make the judgment debt and costs without unnecessary sacrifice of the lands. *Williams v. Dunn*, 163 N. C. 206, 79 S. E. 512.

For additional notes on this section see Supplement 1913.

642.

The requirement of this section as to service of notice upon defendant is directory only; failure to observe it will not avoid sale as against a stranger without notice of the irregularity, nor can it be assailed collaterally. *Williams v. Dunn*, 163 N. C. 206, 79 S. E. 512.

See notes to Section 641.

645.

This section clearly has reference to sales by the sheriff or persons acting under court decrees, and does not apply to sales under power contained in a deed. *Ferebee v. Sawyer*, 167 N. C. 199, 83 S. E. 17.

648.

When a purchaser has full knowledge that the execution directed a sale without advertisement, and that, in fact, no advertisement whatever had been made, he is not an innocent purchaser, and such a sale is void. *Phillips v. Hyatt*, 167 N. C. 570, 83 S. E. 804.

652.

A person in possession of land under a writing from a married woman which, though void, is color of title, may recover for betterment placed on the land, under this section. *Gann v. Spenser*, 167 N. C. 429, 83 S. E. 620.

An action to recover an undivided interest in lands is in effect a proceeding in ejectment wherein betterment may be assessed. *Daniel v. Dixon*, 163 N. C. 137, 75 S. E. 425.

As to what is color of title see Section 382.

For additional notes on this section see Supplement 1913.

653.

For notes on this section see Supplement 1913.

654.

For notes on this section see Supplement 1913.

655.

Where a person places betterments upon lands held by himself and another as tenants in common, he is only entitled to recover from such other one-half of the cost of the same. *Daniel v. Dixon*, 163 N. C. 137, 79 S. E. 425.

For additional notes on this section see Supplement 1913.

656.

For principles of settlement where one party has received rents and profit, and has paid a mortgage on the property, see *Daniel v. Dixon*, 163 N. C. 137, 79 S. E. 425.

For additional notes on this section see Supplement 1913.

657.

For notes on this section see Supplement 1913.

658.

For notes on this section see Supplement 1913.

679.

Cited (erroneously, it seems) in *Hurst v. R. R.*, 162 N. C. 368, 78 S. E. 434.

684.

For notes on this section see Supplement 1913.

685.

Where one has been adjudicated a bankrupt under the laws of the United States, his right to homestead and personal property exemption under state laws is to be adjudicated in the bankruptcy court. *Pennell v. Robinson*, 164 N. C. 257, 80 S. E. 417.

For additional notes on this section see Supplement 1913.

686.

For notes on this section see Supplement 1913.

687.

For notes on this section see Supplement 1913.

688.

The homestead may be allotted in the undivided interest in lands of a tenant in common, subject only to the rights of enjoyment of the lands by the other tenants in common, who alone may complain. *Kelly v. McLeod*, 165 N. C. 382, 81 S. E. 455.

When the land is sufficiently identified the allotment is not open to objection that the homestead should have been "fixed and described by metes and bounds." That provision applies manifestly to an interest capable of such a description, or in other words, land held in severalty. *Kelly v. McLeod*, 165 N. C. 382, 81 S. E. 455.

*Query.*—Is an allotment of an undivided interest in land void if the interest is worth more than \$1,000.00, the maximum value of a homestead exemption? See *Kelly v. McLeod*, 165 N. C. 382, 81 S. E. 455.

689.

For notes on this section see Supplement 1913.

691.

For notes on this section see Supplement 1913.

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For notes on this section see Supplement 1913.



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For notes on this section see Supplement 1913.

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For notes on this section see Supplement 1913.

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For notes on this section see Supplement 1913.

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For notes on this section see Supplement 1913.

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For notes on this section see Supplement 1913.

717.

The provision of this section requiring the clerk to transfer the case to the civil issue docket when issue is joined, is mandatory, and a non-suit permitted by the clerk is a nullity. *Haddock v. Stocks*, 167 N. C. 70, 83 S. E. 9.

Since the enactment of this statute the parties may under this processioning act establish the dividing line without putting the title to issue, or they may join the issue also upon the title.

If the first course is adopted the judgment is an estoppel as to where the line is located, but not as to title, and under the second the issues raised are transferred to the Superior Court in term and the judgment estops as to title and as to the location of the line. *Whitaker v. Garden*, 167 N. C. 676, 83 S. E. 759.

For additional notes on this section see Supplement 1913.

719.

For notes on this section see Supplement 1913.

723.

Cited but not construed in *Board of Education v. Commissioners*, 167 N. C. 114, 83 S. E. 257.

726.

For notes on this section see Supplement 1913.

727.

For a discussion of the right to an execution against a person upon a judgment, upon a cause of action arising under this section, see *Turlington v. Aman*, 163 N. C. 555, 79 S. E. 1102.

For additional notes on this section see Supplement 1913.

1. An action for a malicious prosecution in which the plaintiff was charged with embezzlement, is an action for "an injury to person or character," within the meaning of this section. *Michael v. Leach*, 166 N. C. 223, 81 S. E. 760.

730.

For a case in which the plaintiff signed the justification of the undertaking instead of the undertaking itself, see *Boger v. Lumber Co.*, 165 N. C. 557, 81 S. E. 784.

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731.

Cited but not construed in dissenting opinion of Clark, C. J., in *Pettigrew v. McCain*, 165 N. C. 472, 81 S. E. 701.

738.

See notes to Section 730.

758.

For notes on this section see Supplement 1913.

759.

For notes on this section see Supplement 1913.

761.

For notes on this section see Supplement 1913.

762.

For notes on this section see Supplement 1913.

763.

As this section fails to prescribe any rule as to the execution of the undertaking, a signing and delivery would be sufficient. *Boger v. Lumber Co.*, 165 N. C. 557, 81 S. E. 784. See this case for the distinction between "signing" and "subscribing."

Where the plaintiff signs his name to the justification of the undertaking instead of to the undertaking itself, and the justice finds that it was the result of a mistake, an order is properly made allowing a correction. *Boger v. Lumber Co.*, 165 N. C. 557, 81 S. E. 784.

A successful defendant in attachment must seek relief in a separate action on the undertaking. *Tyler v. Mahoney*, 166 N. C. 509, 82 S. E. 870.

For additional notes on this section see Supplement 1913.

764.

For notes on this section see Supplement 1913.

765.

For notes on this section see Supplement 1913.

766.

For notes on this section see Supplement 1913.

767.

An attachment can only be levied on property which could be levied on and sold under execution, as the final process in the cause. *Johnson v. Whilden*, 166 N. C. 104, 81 S. E. 1057.

An interest in land held in trust only to sell and make distribution of the proceeds, is not subject to assessment under this section. *Johnson v. Whilden*, 166 N. C. 104, 81 S. E. 1057.

For additional notes on this section see Supplement 1913.

774.

For notes on this section see Supplement 1913.

775.

For notes on this section see Supplement 1913.



776.

Cited but not construed in *Boger v. Lumber Co.*, 165 N. C. 557, 81 S. E. 784.

777.

Under this section jurisdiction can be acquired as to a defendant by the service of an attachment upon a negotiable note, and a publication of a notice based on a jurisdiction thus acquired. *Armstrong v. Kinsell*, 164 N. C. 125, 80 S. E. 235.

For additional notes on this section see Supplement 1913.

784.

An attachment can only be levied on property which could be levied on and sold under execution, as the final process in the cause. *Johnson v. Whilden*, 166 N. C. 104, 81 S. E. 1057.

For additional notes on this section see Supplement 1913.

786.

For notes on this section see Supplement 1913.

790.

It seems that the plaintiff may allege generally that he is the owner and entitled to the immediate possession, and under that prove any right of property, general or special, that entitles him to such possession. *Harper v. Rivenbark*, 165 N. C. 180, 80 S. E. 1057.

Cited but not construed in dissenting opinion of Clark, C. J., in *Pettigrew v. McCoin*, 165 N. C. 472, 81 S. E. 701.

For additional notes on this section see Supplement 1913.

793.

See notes to Section 730.

795.

Amended, see Supplement 1913.

For additional notes on this section see Supplement 1913.

800.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

803.

Cited but not construed in *Highway Commission v. Malone*, 166 N. C. 1, 81 S. E. 1009; *Drainage Commissioners v. Farm Association*, 165 N. C. 697, 81 S. E. 947.

For additional notes on this section see Supplement 1913.

806.

Under our procedure all injunctions are simply ancillary proceedings and cannot issue except when there is an action pending in court, in which jurisdiction has been obtained in one of the modes recognized by the statute. These are:

(1) Personal service, or, in lieu thereof, acceptance of service or a waiver by appearance.

(2) Proceedings *in rem*, in which the court already has jurisdiction of the *res* as to enforce some lien or a partition of property in its con-

trol, and the like. In these cases publication of the summons or notice may be made, but the judgment has no personal force, not even for the costs, being limited to acting upon the property.

(3) Proceedings *quasi in rem*, in which cases the court acquires jurisdiction by attaching property of a non-resident or of an absconding debtor, and in similar cases, and the judgment has no effect beyond the enforcement of the judgment out of the property seized by the attachment. In such cases publication of the summons or notice may be based upon the jurisdiction of the property attached. *Armstrong v. Kinsell*, 164 N. C. 125, 80 S. E. 235.

A mandatory injunction to restrain an action between the same parties in a foreign jurisdiction is *in personam* and will be issued only where both parties are residents of this State and where the defendant is within our jurisdiction; it is not sufficient that he is constructively here, as by being plaintiff in the action wherein the restraining order is sought. *Carpenter v. Hanes*, 162 N. C. 46, 77 S. E. 1101. See this case as to when the defense even in such case must be taken by demurrer and not by injunction.

Restrictive covenants in deeds and other instruments limiting the use of land in a specified manner, or prescribing a particular use, which create equitable servitudes on the land, will be specifically enforced in equity by injunction. *Guilford v. Porter*, 167 N. C. 366, 83 S. E. 564.

The courts will not by a restraining order pending the litigation stop the prosecution of a great enterprise when the allegations of the complaint are squarely denied by the answer, and when, though the complaint is found to be true, there will be ample remedy either by the recovery of damages or in requiring the defendant to abate the injury by reducing the height of its dam—in short, when the damages are neither certain nor irreparable. *Rope Co. v. Aluminum Co.*, 165 N. C. 572, 81 S. E. 771.

The sufficiency of the complaint will only be considered in determining the right to a restraining order, when the controversy is not before the court on its merits. *Moore v. Monument Co.*, 166 N. C. 211, 81 S. E. 170.

The correctness of a ruling dissolving a restraining order will not be considered on appeal when it is made to appear that the act sought to be restrained has been committed. *Moore v. Monument Co.*, 166 N. C. 211, 81 S. E. 170.

The courts of this State will not undertake by injunction to enjoin the enforcement of the criminal law. *Express Co. v. High Point*, 167 N. C. 103, 83 S. E. 254.

In *R. R. v. Morehead City*, 167 N. C. 118, 83 S. E. 259, the court refused to restrain the enforcement of a municipal ordinance which in effect required a railroad to move its telegraph poles upon its right of way which had become one of the principal streets of the town of the defendant.

For a discussion as to the effect of a deed made pending an injunction to sell the land, see *Gobble v. Orrel*, 163 N. C. 489, 79 S. E. 957.

For additional notes on this section see Supplement 1913.

807.

For notes on this section see Supplement 1913.

808.

This section protects the rights of both parties until the final termination of the action, and prohibits the cutting of trees by either of them until then. *Riley v. Carter*, 165 N. C. 334, 81 S. E. 414.



This section extends the time for cutting the timber for the period that the injunction lasts. *Riley v. Carter*, 165 N. C. 334, 81 S. E. 414.  
For additional notes on this section see Supplement 1913.

809.

For notes on this section see Supplement 1913.

810.

Cited but not construed in dissenting opinion of Clark, C. J., in *Pettigrew v. McCoin*, 165 N. C. 472, 81 S. E. 701.

814.

For notes on this section see Supplement 1913.

817.

See notes to Section 730.

For additional notes on this section see Supplement 1913.

821.

For notes on this section see Supplement 1913.

822.

Mandamus against the county commissioners to enforce the payment of a debt for a necessary expense incurred by the county is the proper and only remedy. *Withers v. Commissioners*, 163 N. C. 341, 79 S. E. 615.

For additional notes on this section see Supplement 1913.

824.

For notes on this section see Supplement 1913.

825.

For notes on this section see Supplement 1913.

826.

For notes on this section see Supplement 1913.

827.

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

828.

A letter received in due course of mail purporting to be written by the Attorney General granting leave hereunder, in answer to another letter proved to have been sent him is *prima facie* genuine, and is admissible in evidence without proof of the handwriting or other proof of its authenticity. *Echard v. Viele*, 164 N. C. 122, 80 S. E. 408.

For additional notes on this section see Supplement 1913.

829.

For notes on this section see Supplement 1913.

830.

For notes on this section see Supplement 1913.

833.

For notes on this section see Supplement 1913.

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834.

For notes on this section see Supplement 1913.

835.

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841.

For notes on this section see Supplement 1913.

842.

See notes to Section 730.

843.

For notes on this section see Supplement 1913.

844.

For notes on this section see Supplement 1913.

846.

Cited but not construed in dissenting opinion of Clark, C. J., in *Pettigrew v. McCain*, 165 N. C. 472, 81 S. E. 701.

For additional notes on this section see Supplement 1913.

847.

For notes on this section see Supplement 1913.

853.

For notes on this section see Supplement 1913.

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For notes on this section see Supplement 1913.

856.

For notes on this section see Supplement 1913.

859.

Where one of several makers of a note agree with the payee that they shall be released from their obligations by giving a new note in a smaller sum subject to the same conditions of warranty as the old one, the giving of the new note is valid as a compromise under this section, and the warranty in the former transaction is a part of the consideration for the new one and is enforceable. *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.

For additional notes on this section see Supplement 1913.

860.

A tender of judgment unaccepted cannot be given in evidence and can only be used after verdict, before the judge, to enable him to adjudge who shall pay the costs. *Grocery Co. v. Taylor*, 162 N. C. 307, 78 S. E. 207.

For additional notes on this section see Supplement 1913.



864.

For a discussion of the principles of tender, generally, see *Medicine Co. v. Davenport*, 163 N. C. 294, 79 S. E. 602.

865.

For notes on this section see Supplement 1913.

866.

For notes on this section see Supplement 1913.

867.

For notes on this section see Supplement 1913.

874.

For notes on this section see Supplement 1913.

879.

For notes on this section see Supplement 1913.

884.

See Section 884a, allowing service by telephone in certain cases.

**884a. Authorizing the service of subpoenas and summonses for jurors by telephone.**

Sheriffs, constables and other officers charged with the service of such process may serve subpoenas and summonses for jurors by telephone, and such service shall be valid and binding on the person served. When such process is served by telephone, the return of the officer serving it shall state it is served by telephone. (1915, c. 48. In effect February 22, 1915.)

887.

For notes on this section see Supplement 1913.

901(9).

For notes on this section see Supplement 1913.

904.

Amended, see Supplement 1913.

915(21).

For notes on this section see Supplement 1913.

924.

Amended, see Supplement 1913.

937.

For notes on this section see Supplement 1913.

939(4).

For notes on this section see Supplement 1913.

941.

For notes on this section see Supplement 1913.

## 944.

For notes on this section see Supplement 1913.

## 945a. Providing for the trial of proceedings in contempt in certain cases.

1. In all proceedings for contempt and in proceedings as for contempt, the judge or other judicial officer who issues the rule or notice to the respondent may make the same returnable before some other judge or judicial officer.

2. In all such proceedings referred to in the preceding section, when the personal conduct of the judge or other judicial officer or his fitness to hold his judicial position is involved, it shall be the duty of such judge or officer to make the rule or notice returnable before some other judge or officer: *Provided*, that nothing herein contained shall apply to any act or conduct committed in the presence of the court and tending to hinder or delay the due administration of the law nor to proceedings for the disobedience of a judicial order rendered in any pending action.

3. This act shall not apply to pending proceedings. (1915, c. 4. In effect January 25, 1915.)

## 946.

For deed construed in the light of this section, see *College v. Riddle*, 165 N. C. 211, 81 S. E. 283.

Cited but not construed in *Holloway v. Green*, 167 N. C. 91, 83 S. E. 243.

For additional notes on this section see Supplement 1913.

## 948.

Under the circumstances of this case, it was held that a bond for title for a tract of land described in said bond as "On the headwaters of Swannanoa River, adjoining Hemphill heirs, Gilliam heirs, and others, containing 41 acres more or less," was sufficient so far as the description was concerned. *Patton v. Sluder*, 167 N. C. 500, 83 S. E. 818.

## 949a.

For notes on this section see Supplement 1913.

## 950.

A tax deed may be executed by an ex-sheriff hereunder. *McNair v. Boyd*, 163 N. C. 478, 79 S. E. 966.

## 952.

This section is constitutional and valid. *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

When the husband, being a minor, joins in the deed to lands of his wife, the conveyance is voidable, subject to his affirmance or avoidance when he becomes of age; and where the deed has been disapproved in apt time by him, the conveyance is void. *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

The act of the husband is contractual in its nature both by the express terms of our statutory law and in its operative effect. *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

The essential requirements to a valid deed by the *feme covert* are



that her husband must join in the execution of the deed, and the privy examination of the wife must be taken. *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

Unless the formalities established by this statute are complied with, the deed of a married woman is absolutely void. *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

Section 2108 of the Revisal clearly refers throughout to contracts between the husband and wife, and does not and was not intended to affect the contracts between the husband and the wife and third parties. *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

A deed made by a married woman without taking her privy examination and the joinder of her husband is void. *Moore v. Johnson*, 162 N. C. 266, 78 S. E. 158.

Cited but not construed in *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

For additional notes on this section see Supplement 1913.

953.

Cited but not construed in *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

For additional notes on this section see Supplement 1913.

954.

Cited but not construed in *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

955.

Cited but not construed in *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

956.

Cited but not construed in *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

For additional notes on this section see Supplement 1913.

960.

In *Grocery Co. v. Taylor*, 162 N. C. 307, 78 S. E. 207, it is said that the principles to be deduced from the authorities therein mentioned are as follows:

1. That a mortgage upon a stock of goods, the possession of which is left with the mortgagor, to secure a debt maturing in the future, which contains no provision for an account of sales and the application of the proceeds to the debt, is presumptively fraudulent as to existing creditors.

2. That the motive or intent entering into the transaction is immaterial, and that the presumption of fraud cannot be rebutted by proving the absence of an actual intent to defraud.

3. That the presumption of fraud may be rebutted by proving that there was no other creditor of the mortgagor at the time of the registration of the mortgage, or, if there was such creditor, that the mortgagor owned other property at that time, which could be subjected to payment of the debt, sufficient to pay such creditor.

A mortgage upon a stock of goods, the possession of which is left with the mortgagor, to secure a debt maturing in the future which contains no provision for an account of sales and the application of

the proceeds of the debt is presumptively fraudulent as to existing creditors. *Grocery Co. v. Taylor*, 162 N. C. 307, 78 S. E. 207.

Where the grantee in the alleged fraudulent conveyance has conveyed the land to a third person, such person should be made a party. *Aman v. Walker*, 165 N. C. 224, 81 S. E. 162.

It is immaterial whether the debt of the creditor accrued before or after the date of the fraudulent deed. *Aman v. Walker*, 165 N. C. 224, 81 S. E. 162.

Under this section the burden of proof is on the purchaser of property conveyed to defraud creditors to show that he bought for a valuable consideration and without notice. *Pennell v. Robinson*, 164 N. C. 257, 80 S. E. 417.

Heirs at law may not impeach, in their own right, their ancestors' deed for fraud against his creditors. *Pierce v. Stallings*, 163 N. C. 107, 79 S. E. 302.

For an extended statement of the principles to be deduced from the authorities as to fraudulent conveyances, see *Aman v. Walker*, 165 N. C. 224, 81 S. E. 162.

Cited but not construed in *Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585; *Sturges v. Portis Mining Co.* (Dis. Ct.), 206 Fed. 534.

For additional notes on this section see Supplement 1913.

961.

Cited but not construed in *Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

For additional notes on this section see Supplement 1913.

962.

In proceedings under this section a deed was found to be fraudulent and void in law "as to the plaintiff," and was "set aside, revoked, rescinded and annulled." The judgment was afterwards paid. *Held*: The deed was invalid as to creditors only, and remained valid as between the parties, and the property passed by a conveyance by the grantee. *Sturges v. Portis Mining Co.* (Dis. Ct.), 206 Fed. 534.

For additional notes on this section see Supplement 1913.

963.

For notes on this section see Supplement 1913.

964.

See notes to Section 960.

964a.

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

While this statute has the object to prevent persons in debt who own stocks of merchandise from selling the same in bulk for the purpose of defrauding their creditors, its subject matter is not fraud in such sales, but the regulation of them. *Pennell v. Robinson*, 164 N. C. 257, 80 S. E. 417.

Under this section a sale in bulk is *prima facie* fraudulent and open to attack on such ground by creditors, even though the provisions of the act are fully complied with, but if they are not complied with, then the sale is absolutely void as to creditors, without any further evidence of a fraudulent purpose. *Pennell v. Robinson*, 164 N. C. 257, 80 S. E. 417.



967.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

968.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

969.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**970. Substituted trustee to give bond.**

Upon the removal or resignation of any trustee it shall be the duty of the clerk to require the person appointed to execute the provisions of such deed of trust, before entering upon his duties, to file with the clerk a good and sufficient bond, to be approved by the clerk in a sum double the value of the property in said deed of trust, payable to the state of North Carolina, and conditioned that such person shall faithfully execute and carry into effect the provisions of said deed of trust. (1909, c. 918; 1915, c. 176.)

For notes on this section see Supplement 1913.

972.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**973a. Substitute trustees in deeds of assignment.**

When a trustee named in a deed of assignment for the benefit of creditors has died or resigned or has in any way become incompetent to execute the trust, the clerk of the superior court of the county wherein said deed of assignment has been registered is authorized and empowered, in a special proceeding in which all persons interested have been made parties, to appoint some discreet and competent person to act as such trustee and to execute all the trusts created in the original deed of assignment, according to its true intent and as fully as if originally appointed trustee therein. (1915, c. 176. In effect March 9, 1915.)

974.

*Quære.*—Does an unconditional acceptance by the drawee of an order to pay money when he owes nothing to the drawer of the order fall within this section. *Craig v. Stewart*, 163 N. C. 531, 79 S. E. 1100.

For additional notes on this section see Supplement 1913.

975.

For notes on this section see Supplement 1913.

976.

It is unnecessary that the writing be "subscribed," if the writing in express terms or by reasonable intendment contains a promise to convey on the part of the owner, and his signature, evincing a purpose

to come under such obligation, appears anywhere in the instrument. *Flowe v. Hartwick*, 167 N. C. 448, 83 S. E. 841.

A written contract to convey, signed by an agent, will bind, though the authority be given by parol. *Flowe v. Hartwick*, 167 N. C. 448, 83 S. E. 841.

A contract with a broker to sell real estate is not required to be in writing. *Palmer v. Lowder*, 167 N. C. 331, 83 S. E. 464.

An option amounts to a conditional contract to sell and, in its spirit and meaning, comes well within this section. *Ward v. Albertson*, 165 N. C. 218, 81 S. E. 168.

One who has rendered services in execution of a verbal contract which, on account of the statute, cannot be enforced against the other party, can recover the value of the services upon a *quantum meruit*. *Fairecloth v. Kenlaw*, 165 N. C. 228, 81 S. E. 299.

A note for the purchase money of land signed by the vendee but written by the vendor and containing his name in his own handwriting, is not a sufficient memorandum within the meaning of this section. *Burris v. Starr*, 165 N. C. 657, 81 S. E. 929.

In this case the written agreement though executed long after the contract between the parties, which had been made by parol, was held a sufficient memorandum under this section. *Winslow v. White*, 163 N. C. 29, 79 S. E. 258.

This section does not forbid a parol trust in lands to stand seized to the use of another. *Anderson v. Harrington*, 163 N. C. 140, 79 S. E. 425.

For additional notes on this section see Supplement 1913.

977.

For notes on this section see Supplement 1913.

978.

For notes on this section see Supplement 1913.

979.

Since the enactment of the statute, embodied in this section, the courts, in administering the doctrine of parol trusts, have treated these deeds of bargain and sale and other written instruments formally conveying land, when properly proved and registered, as feoffments, and have upheld these interests when established by proper testimony. *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430.

Cited but not construed in *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

For additional notes on this section see Supplement 1913.

980.

An option amounts to a conditional contract to sell, and, in its spirit and meaning comes well within this section. *Ward v. Albertson*, 165 N. C. 218, 81 S. E. 168.

This section has no application where the grantee in the second deed is not a purchaser for value. *Buchanan v. Clark*, 164 N. C. 56, 80 S. E. 424.

Where both parties are purchasers in good faith and for value, one claiming by adverse possession under an unregistered deed as color of title, and the other under a prior registered deed, and both under a common source, the party claiming under the registered deed has the better title. *Moore v. Johnson*, 162 N. C. 266, 78 S. E. 158.



Since the passage of this act an unregistered deed does not constitute color of title, where both parties to the action claim from a common source of title. *Moore v. Johnson*, 162 N. C. 266, 78 S. E. 158.

Registration under this section will not impart validity to a void deed. *Thompson v. Thomas*, 163 N. C. 500, 79 S. E. 896.

For additional notes on this section see Supplement 1913.

**981. Deeds executed prior to January first, one thousand eight hundred and eighty-five.**

Any person holding any unregistered deed or claiming title thereunder, executed prior to the first day of January, one thousand eight hundred and eighty-five, may have the same registered without proof of the execution thereof: *Provided*, that such person shall make an affidavit before the officer having jurisdiction to take probate of such deed, that the grantor, bargainor, or maker of such deed, and the witnesses thereto are dead or cannot be found, and that he cannot make proof of their handwriting: *Provided*, that it shall also be made to appear by affidavit that affiant believes such deed to be a *bona fide* deed and executed by the grantor therein named; and *Provided further*, that this section shall not interfere with vested rights nor shall a deed so admitted to record be used as evidence in any action now pending. Said affidavit shall be written upon or attached to such deed, and the same, together with such deed, shall be entitled to registration in the same manner and with the same effect as if proven in the manner prescribed by law for other deeds. (1913, c. 116; 1915, c. 90.)

The amending act provides that the act shall not apply to actions pending at the time of its ratification, which was March 5, 1915.

The purpose of this section was to secure the registration of deeds and increase the security of titles. Its provisions should be construed liberally to promote this end. *Richmond Cedar Works v. Pinnix* (Dis. Ct.), 208 Fed. 785.

Where a corporation is the holder of the deed, its president may make the affidavit required. *Richmond Cedar Works v. Pinnix* (Dis. Ct.), 208 Fed. 785.

For additional notes on this section see Supplement 1913.

**982.**

Amended, see Supplement 1913.

A chattel mortgage of a bay horse, incorrectly recorded as a bay steer, does not give notice to a subsequent mortgagee of the horse of the prior encumbrance, and the lien of the second mortgage is prior to that of the first, though subsequently registered. *Abernathy v. Starnes*, 164 N. C. 162, 80 S. E. 157.

A chattel mortgage given January 16, 1911, but not registered until August 3, 1911, is a voidable preference when the grantor is adjudicated a bankrupt upon petition filed December 2, 1911. *Brigman v. Covington* (C. C. A.), 219 Fed. 500.

For additional notes on this section see Supplement 1913.

**983.**

Amended as to Durham, Guilford, Rockingham, Halifax and Surry counties. P. L. L. 1915, c. 215.

For notes on this section see Supplement 1913.

984.

For notes on this section see Supplement 1913.

988.

For notes on this section see Supplement 1913.

989.

The fact that the relationship of brother-in-law exists between the grantor and the notary does not disqualify the latter to take the acknowledgment. *Hinton v. Hall*, 166 N. C. 477, 82 S. E. 847.

A notary is not disqualified by the fact that under agreement with the mortgagor he received a certain part of the money loaned, in payment of obligations of the mortgagor to his wife and himself. *Hinton v. Hall*, 166 N. C. 477, 82 S. E. 847.

Where the incapacity of the officer does not appear in the record, the one who takes under the grantee will be adjudged to have acquired a good title. *Spruce Co. v. Hunnicutt*, 166 N. C. 202, 81 S. E. 1079.

Where a probate of a deed appears to be regular on its face and taken before one apparently acting as a justice of the peace, it will be effectual as the act of an officer *de facto*, if not *de jure*. *Spruce Co. v. Hunnicutt*, 166 N. C. 202, 81 S. E. 1079.

An acknowledgment and privy examination taken before an officer who has neither any interest in the instrument nor is a party thereto is not invalidated simply because he is related to the parties. *Holmes v. Carr*, 163 N. C. 122, 79 S. E. 413.

For additional notes on this section see Supplement 1913.

990.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

993.

For notes on this section see Supplement 1913.

995.

Amended, see Supplement 1913.

999.

For history of this section see *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

For additional notes on this section see Supplement 1913.

1001.

Cited but not construed in *Richmond Cedar Works v. Pinnix*, 208 Fed. 785.

For additional notes on this section see Supplement 1913.

1002.

For notes on this section see Supplement 1913.

1004.

For notes on this section see Supplement 1913.

1005.

The probate of a deed of a corporation will not be held as defective when it appears to have been made in substantial compliance with



the statute, as in this case. *Spruce Co. v. Hunnicutt*, 166 N. C. 202, 81 S. E. 1079.

For additional notes on this section see Supplement 1913.

**1009.**

For notes on this section see Supplement 1913.

**1010b. Where the order of registration has been omitted.**

In every case where it shall appear from the records of the office of the register of deeds of any county in this State that the execution of a deed of conveyance was duly acknowledged before the clerk or deputy clerk of the superior court of such county and the certificate of such officer taking the acknowledgment was made complete except that the order of registration was omitted and such deed with the certificate of such officer was duly registered without any order of registration, any and all such probates and registrations are hereby validated and the records of such deeds of conveyance may be read in evidence upon the trial or hearing of any cause with the same force and effect as if the same had been duly ordered registered: *Provided*, that this act shall only apply to deeds so acknowledged and registered prior to January first, one thousand nine hundred and fifteen. (1915, c. 179. In effect March 9, 1915.)

**1012a. Where officer fails to attach seal.**

(This section re-enacted in terms by Ch. 36, Laws 1915. The reason why is not stated. There is a slight change in the ratification clause.)

**1017.**

For notes on this section see Supplement 1913.

**1022. Before notary or clerk of court of record of another state.**

All deeds and conveyances made for lands in this state, which have previous to February fifteenth, one thousand eight hundred and eighty-three, been proven before a notary public or clerk of a court of record, or court of record, not including mayor's court, of any other state, and such proof having been duly certified by such notary or clerk taking the proof as aforesaid, under the official seal of such notary public or court of record, or in accordance with the act of the Congress regulating the certifying of records of the courts of one state to another state, or under the seal of such courts, and such deed or conveyance so proven and certified, with the certificate of having been registered in the office of register of deeds in the book of records thereof for the county in which such lands were situate at the time of the registration of such deed or conveyance, shall be sufficient registration of the same, and such proof and registration shall be adjudged good and valid in law. (1915, c. 213.)

For notes on this section see Supplement 1913.

**1024.**

For notes on this section see Supplement 1913.

**1029a.**

A large number of acts were passed at the session of 1915 validating defective acknowledgments and probates, but they have not been considered of sufficient general interest for publication in this volume.

**1039.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**1040.**

For notes on this section see Supplement 1913.

**1041.**

Amended as to Durham, Guilford, Rockingham, Halifax and Surry counties. P. L. L. 1915, c. 215.

**1042.**

Amended, see Supplement 1913.

A sale of this character may be postponed and, unless a statute or some stipulation of the contract otherwise provides, a reasonable notice of the postponement may suffice. *Ferebee v. Sawyer*, 167 N. C. 199, 83 S. E. 17. In this case the notice of postponement was held insufficient.

While failure to advertise according to the terms of the power of sale invalidates the sale, and such sale will be set aside as to the purchaser, a subsequent or remote grantee without notice and in good faith takes a good title against such defects or irregularities in the sale of which he had no notice. *Hinton v. Hall*, 166 N. C. 477, 82 S. E. 847.

The directions of the statute or of the mortgage as to the length of time the notice must be published, or the number of times it must appear, are imperative, and a sale made without strict compliance therewith is invalid and passes no title as to the immediate parties to the sale. *Ferebee v. Sawyer*, 167 N. C. 199, 83 S. E. 17.

For additional notes on this section see Supplement 1913.

**1043b. When a second sale of real estate by mortgagees, trustees and those making sale by virtue of the power contained in wills, is required.**

1. In the foreclosure of mortgages or deeds in trust on real estate, or in case of the public sale of real estate by an executor, executrix or by any person by virtue of the power contained in a will, in all such cases the sale shall not be deemed to be closed under ten days.

2. If in ten days from the date of the first sale, the sale price shall be increased ten per cent where the first price does not exceed five hundred dollars, and five per cent where the first price exceeds five hundred dollars, and provided the same shall be paid to the clerk of the superior court, it shall be the duty of the mortgagee, trustee, executor, executrix or person offering said real estate for sale to re-open the sale of said property and advertise the same in the same manner as in the first instance; provided, that the clerk of the superior court may, in his discretion, also require the person making such advance bid to execute a good and sufficient bond in a sufficient amount to



guarantee compliance with the terms of sale should the person offering the advance bid be declared the purchaser at said second sale.

3. In all cases where the bid shall be raised as prescribed in section two of this act, said amount shall be paid to the clerk of the superior court, whereupon said clerk shall issue an order to the mortgagee, or other person, and require him to advertise and re-sell said real estate: *Provided*, it shall only be required to give fifteen days notice of said second sale.

4. Not more than one sale shall be required under this act.

5. Upon the final sale of said real estate, the clerk of the superior court shall issue his order to the mortgagee or other person, and require him to make title to the purchaser. And the clerk shall make all such orders as may be just and necessary to safeguard the interest of all parties.

6. The clerk of the superior court shall keep a record which will show in detail the amount of each bid, the purchase price, and the final settlement between the parties.

7. This act shall not apply to the foreclosure of mortgages or deeds of trust executed prior to April the first, one thousand nine hundred and fifteen. (1915, c. 146. In effect March 8, 1915.)

1044.

For notes on this section see Supplement 1913.

1046.

Amended, see Supplement 1913.

It seems that the trustee in a deed of trust is not authorized to receive payment of the amount secured by the deed of trust unless there be authority, either expressed or implied, from the *cestui que trust*. Wynn v. Grant, 166 N. C. 39, 81 S. E. 949.

A release of a deed of trust by a trustee who is not thereto authorized, either expressly or impliedly, under circumstances sufficient to put the party paying the debt upon inquiry, will not bind the *cestui que trust*. Wynn v. Grant, 166 N. C. 39, 81 S. E. 949.

*Quære*.—Is an unauthorized release of a deed of trust by a trustee good as to *bona fide* purchasers for value without notice? Wynn v. Grant, 166 N. C. 39, 81 S. E. 949.

For additional notes on this section see Supplement 1913.

1051.

Amended, see Supplement 1913.

1054.

For notes on this section see Supplement 1913.

1066.

See notes to Section 1100a.

For additional notes on this section see Supplement 1913.

1074.

For notes on this section see Supplement 1913.

1075      AMENDMENTS AND NOTES TO REVISAL

1075.

For notes on this section see Supplement 1913.

1078.

For notes on this section see Supplement 1913.

1082.

For notes on this section see Supplement 1913.

1086.

For notes on this section see Supplement 1913.

1087.

For notes on this section see Supplement 1913.

1092.

For notes on this section see Supplement 1913.

1095(1).

For notes on this section see Supplement 1913.

1097.

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

1. This section has no application to an action by the owner to enforce specific performance of a contract made with the railroad to stop its trains at a flag station on plaintiff's land, in consideration of which the plaintiff had granted right of way thereof. *Parrott v. R. R.*, 165 N. C. 295, 81 S. E. 348.

1097a.

See notes to Section 1100a.

1098.

Cited but not construed in *Parrott v. R. R.*, 165 N. C. 295, 81 S. E. 348.

1099.

See notes to Section 1100a.

For additional notes on this section see Supplement 1913.

1100.

For notes on this section see Supplement 1913.

1100a.

Where the commission has authorized the transportation of baled hay and approved the charges therefor, but by its prescribed classification does not authorize the carriage of unbaled, loose hay, the company is not liable for the penalty prescribed by Section 2631, by refusing to receive unbaled hay. *Tilley v. R. R.*, 162 N. C. 37, 77 S. E. 994.

Where the rule of the commission prescribes that the articles offered for shipment shall be in good shipping condition, well prepared by the shipper with proper packing and legible, plain marking, "the carriage of loose peavine hay not baled, marked or packed, is prohibited by plain implication." *Tilley v. R. R.*, 162 N. C. 37, 77 S. E. 994.

1104.

For notes on this section see Supplement 1913.



1104a.

Amended, see Supplement 1913.

**1105. What may be carried free.**

Nothing in this chapter shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, states or municipal governments or for charitable or educational purposes; or for any corporation or association incorporated for the preservation and adornment of any historic spot, or to the employees or officers of such company or association while traveling in the performance of their duties, provided they shall not travel further than ten miles one way on any one trip free of charge or to or from fairs or exhibitions for exhibition thereat; or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the free transportation of persons traveling in the interest of orphan asylums or homes for the aged and infirm, or any department thereof, or traveling secretaries of railroad young men's Christian associations, or ex-Confederate soldiers attending annual reunions, or the issuance of mileage, excursion or commutation passenger tickets; or to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' orphan homes, including those about to enter and those returning home after discharge under arrangements with the boards of managers of said homes; or to prevent common carriers from giving free carriage to their own officers and employees and members of their families, or furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a common carrier and ex-employees traveling for the purpose of entering the service of any such common carrier and the families of those persons named; also, the families of persons killed, and the widows during widowhood, and minor children during minority of persons who died while in the service of any such common carrier, or to prevent the principal officers of any common carrier from exchanging passes, franks or tickets with other common carriers, for their officers or employees, and members of their families. Nothing in this section shall be construed to prevent or restrict transportation companies from contracting with newspapers for advertising space in exchange for transportation over their lines to such an extent as may be agreed upon between the two parties for said consideration. The commissioners and their clerks shall be transported free of charge over all railroads and other transportation lines which are under the supervision of the commission; and when traveling on official business they may take with them experts or other agents whose service they may deem temporarily of public importance. Nothing in this section shall

be construed to prevent transportation companies, if they so desire, from furnishing transportation to such agricultural extension and demonstration workers as are engaged in work in the field in efforts to increase production on the farm and to improve the farm home, when such workers are actually engaged in the performance of duties requiring travel. (1911, cc. 49, 148; 1913, c. 100; 1915, c. 215.)

1106.

For notes on this section see Supplement 1913.

1109.

For notes on this section see Supplement 1913.

1110.

For notes on this section see Supplement 1913.

1111.

Cited but not construed in dissenting opinion in *Jeans v. R. R.*, 164 N. C. 224, 80 S. E. 242.

1112.

Cited but not construed in *Tilley v. R. R.*, 162 N. C. 37, 77 S. E. 994.  
For additional notes on this section see Supplement 1913.

1113.

For notes on this section see Supplement 1913.

1117.

For notes on this section see Supplement 1913.

1128.

Amended, see Supplement 1913.

1130.

For notes on this section see Supplement 1913.

**1131. Mortgaged corporate property subject to execution for labor and torts.**

Mortgages of corporations upon their property or earnings, whether in bonds or otherwise, shall not have power to exempt the property or earnings of such corporation from execution for the satisfaction of any judgment obtained in courts of the state against such corporations for labor performed and clerical services, nor torts committed by such corporation whereby any person is killed or any person or property injured, any clause or clauses in such mortgage to the contrary notwithstanding. (1915, c. 201.)

For notes on this section see Supplement 1913.

1137.

Amended, see Supplement 1913.

As to what constitutes a *de facto* corporation see *College v. Riddle*, 165 N. C. 211, 81 S. E. 283.



A defective organization of a corporation under a general law authorizing it, is cured by a legislative amendment to its original charter. *College v. Riddle*, 165 N. C. 211, 81 S. E. 283.

**1138.**

Amended, see Supplement 1913.

A street railway company chartered hereunder may interchange traffic with carriers doing an interstate business without violating its charter. *Land Co. v. Traction Co.*, 162 N. C. 314, 78 S. E. 219.

For right of street railway to condemn land, see Section 2575.

**1138a. Security selling companies formed; foreign corporations of similar character may domesticate.**

1. Corporations may be formed under section one thousand one hundred and thirty-seven of the Revisal of one thousand nine hundred and five, and laws amendatory thereto, to conduct the business of selling securities and bonds of any kind, including its own bonds and choses in action, on the partial payment, instalment, or other plan of payment, and to loan money on mortgage, personal or other security and to collect interest in advance on the same, and to charge a fee of one dollar for investigating the loan, but no fee shall be charged for a renewal of the loan. (1909, c. 502, s. 1; 1915, c. 189.)

For the remainder of the act of 1909 see this section number in Gregory's Supplement.

**1139.**

Cited but not construed in *College v. Riddle*, 165 N. C. 211, 81 S. E. 283.

**1141.**

Before the rights of creditors have supervened, the subscribers and stockholders may, by the consent of each and all of them and within the limits of the charter, release one from his subscription to the stock. *Boushall v. Myatt*, 167 N. C. 328, 83 S. E. 352.

**1149.**

For notes on this section see Supplement 1913.

**1152.**

Repealed, see Supplement 1913.

**1159.**

For notes on this section see Supplement 1913.

**1160.**

It is not lawful for a stockholder in a corporation to pay for his stock only by lending his credit to the concern, or by indorsing the corporate note. *Bernard v. Carr*, 167 N. C. 481, 83 S. E. 816.

For additional notes on this section see Supplement 1913.

**1161.**

For notes on this section see Supplement 1913.

1162 AMENDMENTS AND NOTES TO REVISAL

1162.

For notes on this section see Supplement 1913.

1164.

The provision as to notice in this section is only necessary to afford the stockholders protection against creditors. As between the parties, the reduction, if otherwise lawful and valid and pursuant to resolutions properly passed, will bind the members, and may be enforced, as in this instance, by corporate action. *Meisenheimer v. Alexander*, 162 N. C. 226, 78 S. E. 161.

1180.

Amended, see Supplement 1913.

1181.

For notes on this section see Supplement 1913.

1182.

For notes on this section see Supplement 1913.

1183.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

1184.

For notes on this section see Supplement 1913.

1185.

For notes on this section see Supplement 1913.

1188.

For notes on this section see Supplement 1913.

1190.

For notes on this section see Supplement 1913.

**1194. To file charters and statement with secretary of state; fees therefor; forfeiture.**

Every foreign corporation before being permitted to do business in this state, insurance companies excepted, shall file in the office of the secretary of state a copy of its charter or articles of agreement, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this state, the name of the agent in charge of such office, the character of the business which it transacts and the names and postoffice addresses of its officers and directors. And such corporation shall pay to the secretary of state, for the use of the state, twenty cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than twenty-five dollars nor more than two hundred and fifty dollars, and also a filing fee of five hundred dollars. And every corporation failing to comply with the provisions



of this section shall forfeit to the state five hundred dollars to be recovered, with costs, in an action to be prosecuted by the attorney general, who shall prosecute such actions whenever it shall appear that this section has been violated. (1915, c. 263.)

See Section 1194a.

For notes on this section see Supplement 1913.

#### **1194a. When foreign corporation may withdraw from State.**

Such corporations may withdraw from the state upon filing in the office of the secretary of state a statement signed by its president and secretary and attested by its corporate seal, setting forth the fact that such corporation desires to withdraw, and upon payment of the secretary of state of a fee of five dollars: *Provided, however*, any railroad, banking, express or telegraph company, which has heretofore domesticated in this state, or which is now engaged in business within this state, having a regularly appointed agent upon whom service of process can be made located in this state, shall not be required to do any act required by said section one thousand one hundred and ninety-four of the Revisal of one thousand nine hundred and five, or by this act. (1915, c. 263. In effect March 9, 1915.)

#### **1195.**

For notes on this section see Supplement 1913.

#### **1196.**

Notwithstanding a suit by stockholders under this section and the appointment of a receiver under Section 1219, creditors are not entitled to relief in the bankruptcy court until the corporation has become insolvent and has committed an act of bankruptcy. *Bank of Andrews v. Gudger* (C. C. A.), 212 Fed. 49.

The pendency of a suit under this section, and the possession of the corporate property by a receiver appointed under Section 1219, does not deprive creditors of their right to have the corporate assets brought into the bankruptcy court, though the receiver was appointed more than four months prior to the filing of the petition. *Bank of Andrews v. Gudger* (C. C. A.), 212 Fed. 49.

For additional notes on this section see Supplement 1913.

#### **1196a. Involuntary, at instance of stockholders.**

(1) Whenever stockholders owning one-fifth or more in amount of the paid-up stock of any corporation organized under the laws of North Carolina and doing business in said state, except corporations organized for religious, charitable, fraternal, and educational purposes, and except banking corporations and all public service corporations, shall apply in term or vacation to the judge of the superior court holding the courts for the county in which the principal place of conducting the business of the corporation is situated, by petition containing a statement that for the three years next preceding the filing of said petition, which time shall begin to run from three years after it shall have begun business, the net earnings of the corporation have not been sufficient to pay in

good faith an annual dividend of four per centum upon the paid stock of said corporation, over and above the salaries and expenses authorized by the by-laws and regulations of said corporation or that the said corporation has paid no dividend for six years preceding said application, or whenever stockholders owning one-tenth or more in amount of the paid up common stock of any such corporation shall apply to the judge of the superior court as aforesaid by petition containing a statement that said corporation has paid no dividend on the common stock for ten years preceding said application, and that they desire a dissolution of said corporation, the judge of said superior court shall make an order requiring the officers of the corporation to file in court, within a reasonable time, inventories showing all the estate, both real and personal, of the corporation, a true account of the capital stock of the corporation, the names of the stockholders, their residences, the number of shares belonging to each, the amount paid in upon said shares and the amount still due thereon, and a statement of all the encumbrances on the property of the corporation and all its contracts which have not been fully satisfied and canceled specifying the place and residence of each creditor, the sum owing to each, the nature of the debt or demand, and the consideration therefor and the books and papers of said corporation: *Provided*, that no suit shall be instituted until each and all of the petitioners shall have owned their stock for the term of two years prior to the institution of the action. (1913, c. 147, s. 1; 1915, c. 137.)

For the remainder of the act of 1913 see this section number in Gregory's Supplement.

### 1199.

Amended, see Supplement 1913.

### 1199a. Dissolution of bankrupt corporations.

1. Unless the stockholders of corporations, chartered under and by virtue of the laws of North Carolina, which have heretofore been adjudged bankrupt, under and as provided by the laws of the United States, shall determine, by appropriate resolutions, to continue the corporate existence of such bankrupt corporation, and furnish the secretary of state with a duly certified copy of such resolutions, all within ninety days after the ratification of this act, the charter of such bankrupt corporation shall be forfeited, without further action, by reason of such bankruptcy and the failure of the stockholders to take action as hereinbefore provided.

2. Unless the stockholders of corporations, chartered under and by virtue of the laws of North Carolina, which may hereafter be adjudged bankrupt, under and as provided by the laws of the United States, shall by appropriate resolutions, determine to continue the corporate existence of such bankrupt corporations, after the adjudication of such corporation in bankruptcy, and furnish the Secretary of State with a duly



certified copy of such resolutions, all within six months after such adjudication in bankruptcy, the charter of such bankrupt corporation shall be forfeited, without further action.

3. The stockholders of any bankrupt corporations whose existence may be continued, as hereinbefore provided, shall pay all privilege taxes which have accrued against such bankrupt corporations since their adjudication, together with a fee of one dollar (\$1) allowed the Secretary of State for recording and filing each certificate provided for in sections one and two of this act. (1915, c. 134. In effect March 8, 1915.)

1203.

For notes on this section see Supplement 1913.

1206.

For notes on this section see Supplement 1913.

1207.

Amended, see Supplement 1913.

1219.

Under the facts here appearing it was held that the jurisdiction of the State court over the property of a corporation in the hands of its receiver came to an end when the corporation was adjudicated a bankrupt. *Bank of Andrews v. Gudger* (C. C. A.), 212 Fed. 49.

The pendency of a suit for dissolution under Section 1196 and the possession of the corporate property by a receiver appointed under this section, does not deprive creditors of their right to have the corporate assets brought into the bankruptcy court, though the receiver was appointed more than four months prior to the filing of the petition. *Bank of Andrews v. Gudger* (C. C. A.), 212 Fed. 49.

Notwithstanding a suit by stockholders under Section 1196 and the appointment of a receiver under this section, creditors are not entitled to relief in the bankruptcy court until the corporation has become insolvent, and has committed an act of bankruptcy. *Bank of Andrews v. Gudger* (C. C. A.), 212 Fed. 49.

For additional notes on this section see Supplement 1913.

1222.

For notes on this section see Supplement 1913.

1224.

For notes on this section see Supplement 1913.

1226.

For notes on this section see Supplement 1913.

1227.

For notes on this section see Supplement 1913.

1228.

For notes on this section see Supplement 1913.

1229.

For notes on this section see Supplement 1913.

1230        AMENDMENTS AND NOTES TO REVISAL

1230.

For notes on this section see Supplement 1913.

1238.

Amended, see Supplement 1913.

Amended as to Cumberland county only. P. L. L. 1915, c. 348.

Cited but not construed in *Hyder v. R. R.*, 167 N. C. 584, 83 S. E. 689.

1243.

Cited but not construed in *White v. Peanut Co.*, 165 N. C. 132, 81 S. E. 134.

For additional notes on this section see Supplement 1913.

1244.

Amended, see Supplement 1913.

1249.

For notes on this section see Supplement 1913.

1251.

Amended, see Supplement 1913.

1252.

For notes on this section see Supplement 1913.

1253.

Amended, see Supplement 1913.

1264(1).

For notes on this section see Supplement 1913.

1267.

This section held to apply to an action in the nature of a creditor's bill brought by material men claiming under the statutory lien the unpaid balance due by the owner of a dwelling to his contractor for its erection. *Bond v. Cotton Mill*, 166 N. C. 20, 81 S. E. 936.

For additional notes on this section see Supplement 1913.

1268.

For notes on this section see Supplement 1913.

1269(3).

For notes on this section see Supplement 1913.

1277.

Where no mismanagement or bad faith on the part of a trustee is shown in an action to which he is party, he is not individually liable for costs. *Lance v. Russell*, 165 N. C. 626, 81 S. E. 922.

For additional notes on this section see Supplement 1913.

1283.    County pays, when.

If there be no prosecutor in a criminal action, and the defendant shall be acquitted, or convicted and unable to pay the costs, or serves out a sentence on the public roads of New Hanover county, or a *nolle prosequi* be entered, or judgment arrested, the county shall pay the



clerks, sheriffs, constables, justices, and witnesses one-half their lawful fees only; except in capital felonies and in prosecutions for forgery, perjury and conspiracy, when they shall receive full fees. And in the following counties the county shall pay one-half their lawful fees, when "not a true bill" is found: Alexander, Alleghany, Ashe, Bertie, Brunswick, Burke, Caldwell, Caswell, Catawba, Chatham, Clay, Craven, Davie, Duplin, Gaston, Granville, Greene, Henderson, Iredell, Jackson, Johnston, Jones, Lenoir, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Montgomery, Northampton, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Richmond, Robeson, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Wake, Watauga, Wayne, Wilkes, Yadkin, and Yancey. All persons subpœnaed as witnesses before the grand jury in Moore county in any criminal prosecution, or who shall be subpœnaed to appear before the judge in any criminal prosecution in said county, shall receive one dollar per day for each day attending, and five cents per mile for each mile traveled to and from court one time, whether a true bill be found or not. And no county shall pay any such costs, unless the same shall have been approved, audited and adjudged against the county as provided in this chapter. All witnesses subpœnaed by order of court to appear before the grand jury in Martin county, and who do attend, and all other witnesses who may testify in open court on the part of the state, shall be allowed to prove attendance and collect one-half fees. In the counties of Brunswick and Catawba the county shall not be liable for any part of the costs of justices of the peace when not a true bill is found. (1907, cc. 50, 40, 93, 94, 162, 208, 606, 627, 695; 1909, c. 107; P. L. L. 1911, cc. 76, 167; P. L. L. 1915, c. 22.)

**1289.**

For notes on this section see Supplement 1913.

**1290a-1290d.**

Amended, see Supplement 1913.

Richmond County added to the list mentioned in these sections. P. L. L. 1915, c. 305.

**1295.**

For notes on this section see Supplement 1913.

**1298.**

Cited but not construed in *In re Pierce*, 163 N. C. 247, 79 S. E. 507.  
For additional notes on this section see Supplement 1913.

**1299.**

For notes on this section see Supplement 1913.

**1300.**

For notes on this section see Supplement 1913.

**1309.**

For notes on this section see Supplement 1913.

1310.

For notes on this section see Supplement 1913.

1311.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

1314.

Amended, see Supplement 1913.

1315.

Amended, see Supplement 1913.

1317.

For notes on this section see Supplement 1913.

1318.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

6. For a case in which a county was held bound by restrictive covenants, in a deed to land acquired by it, see *Guilford v. Porter*, 167 N. C. 366, 83 S. E. 564.

**(14). To provide for the maintenance of the poor.**

To provide by tax for the maintenance, comfort and well-ordering of the poor; to employ, biennially, some competent person as overseer of the poor, to institute proceedings by the warrant of the chairman against any person coming into the county who is likely to become chargeable thereto, and cause the removal of such poor person to the county where he was last legally settled; and to recover by action in the superior court from the said county, all the charges and expenses whatever, incurred for the maintenance or removal of such poor person. (1915, c. 274.)

15. Amended, see Supplement 1913.

29. In the absence of fraud or oppression the building of a bridge is a matter within the sound discretion of the commissioners, and their action will not be reviewed by the Supreme Court. *Davenport v. Commissioners*, 163 N. C. 147, 79 S. E. 423.

30. Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**(34). To appropriate money to National Guard.**

To appropriate such sums of money to the various organizations of the National Guard in their county and at such times as the board may deem proper. (1915, c. 258.)

**1318b. Rules and ordinances regulating the use of public roads and bridges.**

1. The board of commissioners of the several counties shall have power, and it shall be their duty, to make rules and ordinances, not in-



consistent with the acts of the General Assembly, to regulate the use of the public roads, highways, and bridges of their respective counties.

2. They shall have power to make rules and ordinances to regulate the weight of loads permitted to be hauled on the public roads and highways, and to width of tires permitted to be used; and may prohibit the carrying thereon of such loads, and the use of such tires or vehicles as they may deem needlessly injurious or destructive to such roads or bridges. In making such ordinances, they may have regard to the conditions of the various roads or parts thereof, and the conditions of traffic thereon, and may make different rules and ordinances applicable thereto.

3. Any person who shall needlessly violate an ordinance made by the board of county commissioners in pursuance of the authority herein given, or who shall aid, abet or assist in such violation, shall be guilty of a misdemeanor; and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

4. This act shall apply only to the counties of Lee, Rowan, Madison, McDowell, Durham, Davidson, Brunswick, Guilford, Yancey, Cabarrus, Macon, Johnston, Chowan, Franklin, Northampton, Anson, Tyrrell, Randolph, Alamance, Cumberland, Cherokee, Granville, Pasquotank, Pitt, Hoke, Montgomery, Iredell, Richmond, Washington, Beaufort, Duplin, Bertie, Columbus, Hertford and Camden. (1915, c. 264. In effect March 9, 1915.) \*

**1319.**

Amended, see Supplement 1913.

Amended as to Vance county only. P. L. L. 1915, c. 652. This amending act is drawn in a very crude way and might be construed to repeal this section after December 31, 1915.

**1322.**

For notes on this section see Supplement 1913.

**1325.**

For notes on this section see Supplement 1913.

**1328.**

Amended as to Vance, Lincoln and Robeson counties only. P. L. L. 1915, c. 558.

**1334a(1).**

Amended as to Rockingham County only. P. L. L. 1915, c. 314.

**1355.**

Amended as to Mecklenburg and Wake counties only. P. L. L. 1915, c. 792.

**1356.**

*Quaere.*—Does this section authorize the infliction of flogging as a part of prison discipline? State v. Nipper, 166 N. C. 272, 81 S. E. 164. In the absence of rules and regulations made and promulgated by

1359a      AMENDMENTS AND NOTES TO REVISAL

the county commissioners permitting it, a guard has no legal right to whip convicts in his care or custody. *State v. Morris*, 166 N. C. 441, 81 S. E. 462.

**1359a. Convict labor on county farms.**

1. In the interest of all counties that are not provided with the same a county farm may be leased or purchased, and whenever such county or counties make proper provisions for securing and caring for the convicts such county or counties may work all convicts that are now subject to road duty upon the said farms, and may, in the discretion of the board of county commissioners, make the said farms experimental farms.

2. It shall be the duty of the judge holding the courts in the said counties to sentence prisoners convicted to the said farms or to the roads, within his discretion.

3. In those counties that have a road system the county commissioners may provide and work on the county farms, which they may purchase or lease if they have not one, such convicts sentenced to the roads as they may deem proper from time to time on such county farms. (1915, c. 140. In effect March 8, 1915.)

**1362.**

For notes on this section see Supplement 1913.

**1379.**

For notes on this section see Supplement 1913.

**1385.**

Cited but not construed in *Dockery v. Hamlet*, 162 N. C. 118, 78 S. E. 13.

See Section 396(1) as to time within which claim must be presented.

**1394a.**

Stanley, Bladen, Edgecombe and Martin counties added to the list of those mentioned in subsection 4 of this section. P. L. L. 1915, cc. 67, 268, 458, 481.

Beaufort County struck from the list of those mentioned in subsection 4 of this section. P. L. L. 1915, c. 814.

**1398(1).**

For notes on this section see Supplement 1913.

**1409.**

Amended, see Supplement 1913.

**1419.**

For notes on this section see Supplement 1913.

**1420.**

For notes on this section see Supplement 1913.

**1421.**

For notes on this section see Supplement 1913.



1427. For notes on this section see Supplement 1913.
1431. For notes on this section see Supplement 1913.
1432. For notes on this section see Supplement 1913.
1434. See Section 884a, allowing service by telephone in certain cases.
1446. Where it appears upon the face of the record that the service of the justice's summons was valid, it cannot be impeached except by motion in that cause to set it aside. *Ballard v. Lowry*, 163 N. C. 487, 79 S. E. 966.
1447. For notes on this section see Supplement 1913.
1449. For notes on this section see Supplement 1913.
1450. For notes on this section see Supplement 1913.
1457. For notes on this section see Supplement 1913.
1458. For notes on this section see Supplement 1913.
1459. For notes on this section see Supplement 1913.
1460. For notes on this section see Supplement 1913.
1463. For notes on this section see Supplement 1913.
1467. This section contemplates that magistrates, not learned in the law, may sometimes issue papers defective in form, and even in substance, and the method of correction is provided by the section. *State v. Gupton*, 166 N. C. 257, 80 S. E. 989.  
The justice should have amended the proceedings of his own motion, under that section. *State v. Gupton*, 166 N. C. 257, 80 S. E. 989.  
For additional notes on this section see Supplement 1913.
1468. For notes on this section see Supplement 1913.
1473. For notes on this section see Supplement 1913.

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1474.

For notes on this section see Supplement 1913.

1475.

For notes on this section see Supplement 1913.

1478.

For notes on this section see Supplement 1913.

1479.

Injunction will not lie to prevent the service of an execution issued by the Superior Court clerk under this section. The defendant should move before the justice to set the judgment aside, and when such motion is lodged, give the required bond to have the execution recalled until the motion is finally disposed of. *Ballard v. Lowry*, 163 N. C. 487, 79 S. E. 966.

For additional notes on this section see Supplement 1913.

1487.

See notes to Section 730.

1489.

For notes on this section see Supplement 1913.

1490.

For notes on this section see Supplement 1913.

1491.

Where an appellant has failed to give the notice required by this section or the next section, and has been otherwise negligent as to his case, a judgment of the Superior Court refusing to grant the *recordari* will not be disturbed in the Supreme Court. *Tedder v. Deaton*, 167 N. C. 479, 83 S. E. 616.

After an appeal from a judgment rendered by the justice of the peace has been duly docketed in the Superior Court, without notice thereof to the appellee, it is within the discretion of the Superior Court judge then to allow such notice to be given. *Arundell v. Mill Co.*, 164 N. C. 238, 80 S. E. 234.

For additional notes on this section see Supplement 1913.

1492.

See notes to Section 1491.

1493.

For notes on this section see Supplement 1913.

1496(29).

Cited but not construed in *S. v. Pitt*, 166 N. C. 268, 80 S. E. 1060.

1496a. To restrict the running of the process of courts inferior to the superior courts.

The process of any recorder's court, county court, or other court inferior to the superior courts of the State of North Carolina, when said court is exercising the jurisdiction of a justice of the peace in civil matters, shall run only as does the process of the court of a justice of



the peace for the county in which said court is located. (1915, c. 19. In effect February 6, 1915.)

The act contains a provision that it shall not affect actions pending at the date of its ratification, which was February 6, 1915.

**1499a.**

Subsection 3 of this section amended as to Cleveland, Lincoln, Rutherford, and Mitchell. P. L. L. 1915, c. 490.

**1500.**

The amount demanded in the complaint in good faith determines the jurisdiction of the trial court, and when this is sufficient, a recovery of a less amount will not defeat the jurisdiction. *Tillery v. Benefit Society*, 165 N. C. 262, 80 S. E. 1068.

For additional notes on this section see Supplement 1913.

**1502.**

For notes on this section see Supplement 1913.

**1504.**

For notes on this section see Supplement 1913.

**1505.**

For notes on this section see Supplement 1913.

**1505a. Division of the State into two judicial divisions.**

1. The State shall be divided into two judicial divisions, the Eastern and the Western Judicial Divisions.

2. The counties which are now or hereafter may be included in the Judicial Districts from one to ten, both inclusive, shall constitute the Eastern Division, and the counties which are now or hereafter may be included in the Judicial Districts from eleven to twenty, both inclusive, shall constitute the Western Division. That the Judicial Districts shall retain their numbers from one up to twenty, and all such other districts as may from time to time be added by the creation of new districts.

3. The judges now assigned by law shall hold the spring terms of the courts to which they are now assigned, unless changes are made as now provided by law.

4. The fall term one thousand nine hundred and fifteen of the courts shall be held as follows: The judge of the First Judicial District shall hold the courts of the Fifth Judicial District; the judge of the Second the courts of the Sixth; the judge of the Third the courts of the Seventh; the judge of the Fourth the courts of the Eighth; the judge of the Fifth the courts of the Ninth; the judge of the Sixth the courts of the Tenth; the judge of the Seventh the courts of the First; the judge of the Eighth the courts of the Second; the judge of the Ninth the courts of the Third, and the judge of the Tenth the courts of the Fourth, and the judges of the First Judicial Division shall thereafter successively hold the courts of the First Judicial Division, but may make exchange of the courts as now provided by law.

The judges resident in the Western Division shall hold the fall term one thousand nine hundred and fifteen of the court as follows: The judge of the Seventeenth Judicial District shall hold the courts of the Eleventh; the judge of the Eighteenth the courts of the Twelfth; the judge of the Nineteenth the courts of the Thirteenth; the judge of the Twentieth the courts of the Fourteenth; the judge of the Eleventh the courts of the Fifteenth; the judge of the Twelfth the courts of the Sixteenth; the judge of the Thirteenth the courts of the Seventeenth; the judge of the Fourteenth the courts of the Eighteenth; the judge of the Fifteenth the courts of the Nineteenth, and the judge of the Sixteenth the courts of the Twentieth, and the judges resident in the Western Division shall successively thereafter hold the courts of the Western Division subject to such exchanges of courts as are now provided by law; and the judges resident in the Western Division and judges resident in the Eastern Division may exchange courts or circuits with the consent of the governor, provided such exchanges shall not cause a judge to hold all the courts in one Judicial District oftener than once every four years. (1915, c. 15. In effect February 3, 1915.)

**1506.**

The needs of the profession as to the times of the commencement of the terms of the Circuit Courts of the State are so well served by the calendars issued by the Supreme Court Reporter that it has been deemed unnecessary to print in this volume this section as amended.

For notes on this section see Supplement 1913.

**1507.**

For notes on this section see Supplement 1913.

**1508.**

For notes on this section see Supplement 1913.

**1509.**

For notes on this section see Supplement 1913.

**1512.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**1520.**

For notes on this section see Supplement 1913.

**1524.**

The remedy to enforce a decree under a judicial sale of land for the collection of the purchase price of the land is by motion in the cause, the matter remaining under the control of the court, and in proper instances the court may decree a resale of the land if the purchaser does not pay the price within a specified time—in this case, within sixty days. *Davis v. Pierce*, 167 N. C. 135, 83 S. E. 182.

Where a definite indebtedness is declared, and judgment therefor entered and foreclosed by sale decree, though such judgment may be final in some respects, yet as to all subsequent questions arising as



incident to the sale, the occupation and possession of the property by the parties of record, the collection and distribution of the proceeds, and the like, the decree is interlocutory, and the cause is still pending. *Davis v. Pierce*, 167 N. C. 135, 83 S. E. 182.

**1525.**

See notes to Section 1524.

For notes on this section see Supplement 1913.

**1539.**

A petition to rehear, or to grant a new trial for newly discovered testimony, cannot be entertained in this court in criminal actions. *State v. Ice Co.*, 166 N. C. 403, 81 S. E. 956.

While the findings of fact of the Superior Court judge are not controlling on appeal from an injunction order, they are entitled to consideration in the Supreme Court. *Davenport v. Commissioners*, 163 N. C. 147, 79 S. E. 423.

For additional notes on this section see Supplement 1913.

**1542.**

Where a case has been tried in the Superior Court in accordance with a decision therein rendered on a former appeal, exceptions therein taken will not again be passed upon by the Supreme Court on a second appeal. *Latham v. Fields*, 166 N. C. 215, 81 S. E. 410.

When the court is equally divided, the judgment stands affirmed. *Smith v. Commissioners*, 163 N. C. 97, 79 S. E. 1113.

A new trial will not be granted for erroneous admission of evidence or other errors unless it appears that the appellant has been prejudiced. *Barker v. Insurance Co.*, 163 N. C. 175, 79 S. E. 424.

For additional notes on this section see Supplement 1913.

**1543.**

An appeal from an order of a court declining, for lack of power, to reverse the findings of its clerk acting under authority of a former judgment, is premature and will be dismissed. *Walker v. Reeves*, 165 N. C. 35, 80 S. E. 885.

A motion to dismiss for want of jurisdiction may be made for the first time in the Supreme Court on appeal. *Tillery v. Benefit Society*, 165 N. C. 262, 80 S. E. 1068.

For additional notes on this section see Supplement 1913.

**1544.**

For notes on this section see Supplement 1913.

**1545.**

In this action on appeal to recover damages under the Federal Employers' Liability Act, the plaintiff's motion to amend the complaint so as to allege that there are persons living who have a reasonable expectation of pecuniary benefit from the continued life of the deceased, etc., is granted, with leave to defendant to traverse these allegations. *Kenney v. R. R.*, 165 N. C. 99, 80 S. E. 1078.

For additional notes on this section see Supplement 1913.

**1546.**

For notes on this section see Supplement 1913.

**1549.**

The successful party in the Supreme Court is entitled to recover his costs thereon, whatever the final outcome of the litigation. *Carroll v. James*, 162 N. C. 510, 77 S. E. 337.

**1556. Rules of.**

RULE 4. Construing this rule and Rule 6 together in order for a collateral relation of the half blood to inherit under this rule, he must be of the blood of the purchasing ancestor from whom the lands descend. *Noble v. Williams*, 167 N. C. 112, 83 S. E. 180.

RULE 6. *Half blood inherits with whole; parent from child.*

Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed according to the rules which prevail in descents at common law: *Provided*, that in all cases where the person last seized shall have left no issue capable of inheriting, nor brother, nor sister, nor issue of such, the inheritance shall vest in the father and mother, as tenants in common if both are living, and if only one of them is living, then in such survivor. (1915, c. 9.)

A collateral relation of the half blood does not inherit under Rule 4, unless he is of the blood of the purchasing ancestor. *Noble v. Williams*, 167 N. C. 112, 83 S. E. 180.

Cited but not construed in *Jones v. Whichard*, 163 N. C. 241, 79 S. E. 503.

For additional notes on this section see Supplement 1913.

RULE 9. Amended, see Supplement 1913.

RULE 10. Cited but not construed in *Kenney v. R. R.*, 167 N. C. 14, 82 S. E. 968.

**1559. Venue.**

In all proceedings for divorce, the summons shall be returnable to the court of the county in which either the plaintiff or defendant resides. (1915, c. 229.)

**1560.**

For notes on this section see Supplement 1913.

**1561.**

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

See notes to Section 1562.

5. This subsection, express in terms and plain in meaning, is broad enough to include, and clearly does include, any kind of separation by which the marital association is severed and which may be made the subject of further judicial investigation. *Cooke v. Cooke*, 164 N. C. 272, 80 S. E. 178.

There is nothing in this subsection which permits the interpretation that the statute only applies when there has been a separation by mutual consent of the parties. *Cooke v. Cooke*, 164 N. C. 272, 80 S. E. 178.

There is nothing in this subsection to indicate that the right conferred is dependent on the blame which may attach to the one party or the other, nor that the time which may be covered by a judicial



decree of divorce from bed and board shall be excluded from the statutory period. *Cooke v. Cooke*, 164 N. C. 272, 80 S. E. 178.

This cause for divorce shall prevail whenever—

1. There has been a separation of husband and wife.
2. When they have lived apart for ten successive years.
3. When the plaintiff shall have resided in this State for that period.
4. No children be born of the marriage and living.

*Cooke v. Cooke*, 164 N. C. 272, 80 S. E. 178.

#### 1562.

Condonation is forgiveness upon condition that the party forgiven will abstain from like offense afterwards, and moreover treat the forgiving party in all respects with conjugal kindness. Page v. Page, 167 N. C. 346, 83 S. E. 625.

A decree, *a mensa*, does not bar the right to an absolute divorce when the statutory conditions for such a divorce are properly established. *Cooke v. Cooke*, 164 N. C. 272, 80 S. E. 178.

For additional notes on this section see Supplement 1913.

4. It is not error to admit on the trial evidence of the husband's misconduct occurring "more than ten years ago" when it is part of the whole course of his dealings coming down to "within six months of the beginning of the action." Page v. Page, 167 N. C. 346, 83 S. E. 625.

#### 1563.

For notes on this section see Supplement 1913.

#### 1564.

Under this section and Sections 1630 and 1636, neither the husband nor the wife shall be competent or compellable to give evidence which fixes or tends to fix either with adultery and the inhibition extends to all admissions or confessions by the other, of like tenor, either in the pleadings or otherwise. *Hooper v. Hooper*, 165 N. C. 605, 81 S. E. 933.

It will be noted that this section does not disqualify a husband or wife from being witness in their own behalf in actions for divorce or criminal conversation or in criminal actions except when such testimony would be "for or against the other." Per Clark, C. J., in *Hooper v. Hooper*, 165 N. C. 605, 81 S. E. 933.

Where it appears from a perusal of the record that material evidence, made incompetent by statute for reasons of public policy, has been admitted and allowed to affect the result, the judge's failure to exclude it must be held for reversible error, whether exception has been noted or not. *Hooper v. Hooper*, 165 N. C. 605, 81 S. E. 933.

For additional notes on this section see Supplement 1913.

#### 1566.

For notes on this section see Supplement 1913.

#### 1567.

In proceedings hereunder the judgment is not final, and should the husband establish his right to an absolute divorce in his separate action, he may then move in proceedings of this character to have the judgment therein modified or set aside. *Hooper v. Hooper*, 164 N. C. 1, 80 S. E. 64.

An admission in the answer of the husband that he had ceased to occupy a room with his wife or be with her at any place in privacy, and that he had notified his landlady that he would not be responsible

for her board, is an admission of separation. Hooper v. Hooper, 164 N. C. 1, 80 S. E. 64.

In an action for support brought by the wife under the provisions of this section, the inquiry is confined to only two material issues, the marriage and the separation. Hence reasons or excuses of the husband for the separation are irrelevant to the inquiry. Hooper v. Hooper, 164 N. C. 1, 80 S. E. 64.

For additional notes on this section see Supplement 1913.

**1569.**

For notes on this section see Supplement 1913.

**1570.**

It seems that an action for a divorce *a mensa* may be redocketed after dismissal for the purpose of a motion to provide for the maintenance of the minor children, who are not provided for in the original decree. Sanders v. Sanders, 167 N. C. 317, 83 S. E. 489.

A decree directing monthly payments for the maintenance of minor children may be made a lien upon the defendant's real estate. Sanders v. Sanders, 167 N. C. 317, 83 S. E. 489.

When a decree for the maintenance of minor children has been entered in a divorce suit, by their mother against their father, an action brought by the children, by their next friend against their father, asking for a decree of maintenance, is improvidently brought. Sanders v. Sanders, 167 N. C. 317, 83 S. E. 489.

The father must support his infant children, if he is able to do so, whether they have property or not, and after as well as before a decree of divorcement, though the custody of the children is awarded to the mother. Sanders v. Sanders, 167 N. C. 317, 83 S. E. 489.

In this action for divorce the order of the judge appointing the plaintiff custodian for the court of a minor child of the marriage, pending appeal, requiring a bond in a certain sum to keep the child within the jurisdiction of the court and amenable to its orders, etc., is found to be without error. Page v. Page, 167 N. C. 346, 83 S. E. 625.

**1571.**

For notes on this section see Supplement 1913.

**1572.**

For notes on this section see Supplement 1913.

**1573.**

Cited but not construed (as Ch. 74, Laws 1907) in R. R. v. Oates, 164 N. C. 167, 80 S. E. 398.

For additional notes on this section see Supplement 1913.

**1574.**

For notes on this section see Supplement 1913.

**1575.**

For notes on this section see Supplement 1913.

**1576.**

For notes on this section see Supplement 1913.

**1577.**

For notes on this section see Supplement 1913.



1578.

Cited but not construed in *Bullock v. Oil Co.*, 165 N. C. 63, 80 S. E. 972; *Rees v. Williams*, 165 N. C. 201, 81 S. E. 286.

For a discussion of the rule in *Shelly's case*, see *Jones v. Whichard*, 163 N. C. 241, 79 S. E. 503.

For additional notes on this section see Supplement 1913.

1579.

When a husband and wife who have an estate by entireties in lands, are divorced, they become tenants in common of the land. *McKinnon v. Caulk*, 167 N. C. 411, 83 S. E. 559.

The right of survivorship applies to estates in land conveyed jointly to husband and wife, and vests in the heirs of the one surviving the other. *Murchison v. Fogleman*, 165 N. C. 397, 81 S. E. 627.

For additional notes on this section see Supplement 1913.

1580.

See notes to Section 1579.

1581.

Under a correct interpretation of this section, unless a contrary intention clearly appears from the will itself, the contingent event by which an estate is determined must be referred, not to the death of the deviser, but to that of the devisee and holder of the prior estate. *Burden v. Lipsitz*, 166 N. C. 523, 82 S. E. 863.

In this case the "dying without issue" upon which the contingent remainder was to vest, was held to refer to the death of the life tenant. *Rees v. Williams*, 164 N. C. 128, 80 S. E. 247; S. C. on rehearing, 165 N. C. 201, 81 S. E. 286.

Since the adoption of the statute of 1827, now this section, a limitation upon an indefinite failure of issue is not void for remoteness. *Rees v. Williams*, 164 N. C. 128, 80 S. E. 247; S. C. on rehearing, 165 N. C. 201, 81 S. E. 286.

Under this section the event by which the interest of each is to be determined must be referred, not to the death of the deviser, but to that of the several takers of the estate in remainder, respectively, without leaving a lawful heir. *Rees v. Williams*, 164 N. C. 128, 80 S. E. 247; S. C. on rehearing, 165 N. C. 201, 81 S. E. 286.

For additional notes on this section see Supplement 1913.

1583.

For notes on this section see Supplement 1913.

1588.

For notes on this section see Supplement 1913.

1589.

For a proceeding hereunder, see *Guilford v. Porter*, 167 N. C. 366, 83 S. E. 564.

Whether a tax deed is void because of failure to comply with essential provisions of the law in making the sale or in the proceedings leading up to the deed, may be determined under this section. *Christman v. Hilliard*, 167 N. C. 4, 82 S. E. 949.

Under this section a suit can now be maintained to remove a cloud upon the title to lands by one who is not in the possession thereof. *Speas v. Woodhouse*, 162 N. C. 66, 77 S. E. 1000.

The statute has been said to be an extension of the remedy in equity theretofore existing for the removal of clouds on title, and is intended to afford an easy and expeditious mode of determining all conflicting claims to land, whether denied from a common source or from different and independent sources. It is highly remedial and beneficial in its nature, and should, therefore, be construed liberally. *Christman v. Hilliard*, 167 N. C. 4, 82 S. E. 949.

For additional notes on this section see Supplement 1913.

**1590.**

It seems that this section is a restriction imposed upon the power of a testator to dispose of his land as he may please. *Fellowes v. Durfey*, 163 N. C. 305, 79 S. E. 621.

For a case held to have been proceeded in regularly under this section, see *O'Hagan v. Johnson*, 163 N. C. 197, 79 S. E. 450.

Cited but not construed in *Dunn v. Hines*, 164 N. C. 113, 80 S. E. 410; *Bullock v. Oil Co.*, 165 N. C. 63, 80 S. E. 972.

See notes to Section 406 as to appointment, etc., of guardian *ad litem*.

For additional notes on this section see Supplement 1913.

**1591.**

This section is constitutional and valid. *Bullock v. Oil Co.*, 165 N. C. 63, 80 S. E. 972.

For a sale held to have been validated by this section, see *Bullock v. Oil Co.*, 165 N. C. 63, 80 S. E. 972.

Cited but not construed in *Dunn v. Hines*, 164 N. C. 113, 80 S. E. 410.

**1594.**

For notes on this section see Supplement 1913.

**1596.**

For notes on this section see Supplement 1913.

**1598.**

For notes on this section see Supplement 1913.

**1599.**

Where the certified copy of a deed shows that it was registered in a certain book and page more than forty years before, it will be presumed that it was duly admitted to probate, and such copy is admissible in evidence, though it contains no order of registration. *Richmond Cedar Works v. Pinnix*, 208 Fed. (Dis. Ct.) 785.

For additional notes on this section see Supplement 1913.

**1602a. Deeds executed prior to the year 1835 to the people of the State of North Carolina.**

1. In any and all actions hereafter instituted in which the title or ownership of any lands situated in North Carolina is at issue or in dispute, any deed or release, or a duly certified copy thereof, in which the people of the State of North Carolina are grantees and bearing date prior to the year one thousand eight hundred and thirty-five and purporting to have been filed and recorded in the office of the Secretary of State of North Carolina prior to said year and now on file and of record in said office and executed, or purporting to have been executed,



by any person or persons as the representatives or agents or for or on behalf of any society, tribe, nation or aggregation of persons, whether signed or executed individually or in their representative capacity, and any such deed or release having been authorized to be executed by an act of the General Assembly of North Carolina by the properly authorized agents of such society, tribe, nation or aggregation of persons, shall be prima facie evidence that the person or persons signing or executing any such deed or release were the properly authorized agent or agents of such society, tribe, nation or aggregation of persons.

2. Any recitals, or statements of fact in any such deed or release shall be prima facie evidence of the truth thereof in any such action or actions.

3. This act shall not apply to pending actions. (1915, c. 75. In effect March 3, 1915.)

1617.

Cited but not construed in *Hinton v. Canal Co.*, 166 N. C. 484, 82 S. E. 844.

1618.

For notes on this section see Supplement 1913.

1619.

For notes on this section see Supplement 1913.

1621.

For notes on this section see Supplement 1913.

1625.

Cited but not construed in *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820. For notes on this section see Supplement 1913.

1626.

For notes on this section see Supplement 1913.

1628.

See notes to Section 1636.

1629.

See notes to Section 1636.

1630.

See notes to Section 1636.

1631.

An accurate and comprehensive analysis of this section will be found in *Irvin v. R. R.*, 164 N. C. 5, where it is said that this section disqualifies:

Whom—1. Parties to the action.

2. Persons interested in the event of the action.

3. Persons through or under whom the persons in the first two classes derive their title or interest.

A witness, although belonging to one of these classes, is incompetent only in the following cases:

When—To testify in behalf of himself, or the person succeeding to this title or interest against the representative of a deceased person, or committee of a lunatic, or any one deriving his title or interest through them.

And the disqualification of such person, and in even such cases, is restricted to the following:

Subject-Matter—As to a personal transaction or communication between the witness and the person since deceased or lunatic.

And even to those persons and in those cases there are the following:

Exceptions—When the representative of, or person claiming through or under, the deceased person or lunatic is examined in his own behalf, or the testimony of the deceased person or lunatic is given in evidence concerning the same transaction.

*Irvin v. R. R.*, 164 N. C. 5, 80 S. E. 78.

This section has no application whatever to criminal cases. *S. v. Shelton*, 164 N. C. 513, 79 S. E. 883.

In a suit to set aside a deed made by a deceased father to his son, a party defendant, it is incompetent for the son to testify as to the consideration of the deed or his father's intention to make it. *Linker v. Linker*, 167 N. C. 651, 83 S. E. 736.

Where a party claims lands as the heir at law of his deceased father, and the question arises as to whether his father and mother were man and wife, it is competent for a witness to testify that he had heard the mother, since deceased, say that the father was her husband. This section does not apply. *Carter v. Reaves*, 167 N. C. 131, 83 S. E. 248.

In an action against an administrator to recover the value of services the plaintiff alleges he has rendered the deceased, the wife of the plaintiff has no "direct, legal, or pecuniary interest in the event," which would bar her testimony as to a transaction with the deceased. *Helsabeck v. Doub*, 167 N. C. 205, 83 S. E. 241.

Where the only issue in controversy is as to the delivery of a deed from H. to A., both of whom are dead, testimony of the widow of A. that she saw her husband place the deed in his trunk is competent. *Carroll v. Smith*, 163 N. C. 204, 79 S. E. 497.

In an action between a surviving partner and the heirs at law of a deceased one, testimony of a conversation between the surviving partner and a third partner, is not incompetent under this section. *Brantley v. Marshbourn*, 166 N. C. 527, 82 S. E. 959.

In an action by a mother against a railroad company for the negligent killing of her son, she is a competent witness to testify as to what pecuniary benefits she had received from him. *Irvin v. R. R.*, 164 N. C. 5, 80 S. E. 78.

In an action by the wife to recover lands under a conveyance made to her by her husband, since insane, testimony of a son as to the claim of his father to the lands, prior to his deed, in a conversation between them, is incompetent as hearsay, and forbidden by statute. *Coltrain v. Lumber Co.*, 165 N. C. 42, 80 S. E. 895.

The testimony of a witness as to his communications and transactions with a deceased person respecting his title to lands, in dispute, is held not to be objectionable under this section, for at the time it did not appear that the witness had any interest in the controversy. *Hodges v. Wilson*, 165 N. C. 323, 81 S. E. 340.

Notwithstanding the statute, a party may be called to testify touching a transaction of the opposite party, when it is against his own interest. *Seals v. Seals*, 165 N. C. 409, 81 S. E. 613.



For an extended discussion of the competency of the testimony of wife or husband, as against the other, see *Powell v. Strickland*, 163 N. C. 393, 79 S. E. 872.

For additional notes on this section see Supplement 1913.

1634.

For notes on this section see Supplement 1913.

1635.

For notes on this section see Supplement 1913.

1636.

This section and Sections 1628, 1629 and 1630, should all be construed together, as they relate to the same subject—competency of witnesses. *Powell v. Strickland*, 163 N. C. 393, 79 S. E. 872.

Papers about business matters, giving directions which could not be performed without disclosing the contents of the papers, in some respects testamentary in character, left by the husband in his desk with the apparent intent that they should come into the hands of his wife after his death, are not confidential communications within the meaning of this section. *Whitford v. Insurance Co.*, 163 N. C. 223, 79 S. E. 501.

Where the husband brings an action against another for criminal conversation with his wife and the alienation of her affections, the testimony of the husband as to the conduct of the wife, where she is not a party, is not testimony against the wife within the meaning of this section, Revisal, Section 1636, for she has no legal interest in the event of the case, and will not be bound by this evidence, or the judgment rendered, in any action which may be brought against her involving this same matter, or in which she may have a legal interest. *Powell v. Strickland*, 163 N. C. 393, 79 S. E. 872.

It has been expressly held that a husband does not testify for or against his wife if she is not a party to the record and has no legal interest in the action or its event, that is, no interest that can, by the rules of law, be affected thereby. A sentimental interest is not sufficient for the exclusion of the testimony of one of the spouses, but it must be a legal interest. *Powell v. Strickland*, 163 N. C. 393, 79 S. E. 872.

Under this section and Sections 1630 and 1564, neither the husband nor the wife shall be competent or compellable to give evidence which fixes or tends to fix either with adultery, and the inhibition extends to all admissions or confessions by the other, of like tenor, either in the pleading or otherwise. *Hooper v. Hooper*, 165 N. C. 605, 81 S. E. 933.

This section does not disqualify a husband or wife from being witness in their own behalf in actions for divorce or criminal conversation or in criminal actions except when such testimony would be "for or against the other." Per *Clark, C. J.*, in *Hooper v. Hooper*, 165 N. C. 605, 81 S. E. 933.

Where it appears from a perusal of the record that material evidence made incompetent by statute for reasons of public policy, has been admitted and allowed to affect the result, the judge's failure to exclude it must be held for reversible error, whether exception has been noted or not. *Hooper v. Hooper*, 165 N. C. 605, 81 S. E. 933.

It would seem that a paper, although directed to the wife, of which she has no knowledge and which she was not expected to see until after the death of the husband, is not a communication during marriage. *Whitford v. Insurance Co.*, 163 N. C. 223, 79 S. E. 501.

In an action by the husband for damages for criminal conversation with his wife, the declaration of the wife as against the husband are not admissible in evidence. *McCall v. Galloway*, 162 N. C. 353, 78 S. E. 429.

For additional notes on this section see Supplement 1913.

**1637.**

For notes on this section see Supplement 1913.

**1639.**

See Section 884a, allowing service by telephone in certain cases.  
*Query.*—Does that section dispense with the personal service required by this section?

**1643.**

A witness is not justified in not attending because he is a practicing attorney at law and has cases to try in another county on the date upon which the case was called wherein he was a witness. *In re Pierce*, 163 N. C. 247, 79 S. E. 507.

**1645.**

*Seemle*, an agreement to waive all irregularities in the taking of depositions, and that they should be opened and read subject to objections and exceptions, does not confine the party thus agreeing to the objections and exceptions already noted in the depositions. *Howell v. Solomon*, 167 N. C. 588, 83 S. E. 609.

There is nothing in this section which exempts attorneys at law from the penalty prescribed by Section 1643 for non-attendance, though they may have cases for trial upon the date upon which they are required to attend. *In re Pierce*, 163 N. C. 247, 79 S. E. 507.

For additional notes on this section see Supplement 1913.

**1647.**

For notes on this section see Supplement 1913.

**1648.**

Where a party agrees that depositions, which have been taken by his opponent, may be opened and read upon the trial, reserving only the right to object to incompetent testimony therein, he waives his right to object to the irregularity of taking the depositions. *Hardy v. Insurance Co.*, 167 N. C. 22, 83 S. E. 5.

For additional notes on this section see Supplement 1913.

**1652. How taken.**

Any party in a civil action or special proceeding may take the depositions of persons whose evidence he may desire to use, without any special order therefor, unless the witness shall be beyond the limits of the United States. Written notice of the time and place of taking a deposition, specifying the name of the witness, must be served by the party at whose instance it is taken upon the adverse party or his attorney: *Provided*, when the adverse party is a nonresident and has no attorney of record, then it shall be sufficient to publish notice to the adverse party in some newspaper published in the county where the action is pending, or if no paper is published in said county, then in



some newspaper published in the judicial district for three consecutive weeks: *Provided, further*, when the adverse party is a nonresident and service of notice cannot be had on him or his attorney in this state, then one publication of notice to open such deposition shall be sufficient notice. The time for serving such notice shall be as follows: Three entire days when the party notified resides within ten miles of the place where the deposition is to be taken; in other cases, where the party notified resides in the state, one day more for every additional twenty miles, except where the deposition is to be taken within ten miles of a railway in running operation in the state, when one day only shall be given for every hundred miles of railway to the place where the deposition is to be taken. When a deposition is to be taken beyond the state, ten days' notice of the taking thereof shall be given, when the party whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases, where there are no railways running as above specified, twenty days' notice shall be given. When objection is taken to the reading of any such deposition, upon the ground that there are no railways or connecting railways to and from the points specified in this section, or that the notice given had otherwise been actually insufficient, it shall devolve upon the party objecting to satisfy the court of the truth of his allegation. Depositions shall be taken on commission, issuing from the court and under the seal thereof, by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk or by a notary public of this or any other state or foreign country, without a commission issuing from the court. Depositions shall be subscribed and sealed up by the commissioners, or notary public, and returned to the court, the clerk whereof or the judge holding the court, if the clerk is a party to the action, shall open and pass upon the same, after having first given the parties or their attorneys not less than one day's notice; and all such depositions, when passed upon and allowed by the clerk, without appeal, or by the judge upon appeal from the clerk's order, or by the judge holding the court, when the clerk is a party to the action, shall be deemed legal evidence, if the witness be competent. In all criminal actions, hearings and investigations it shall be lawful for the defendant in any such action to make affidavit before the clerk of the superior court of the county in which said action is pending that it is important for the defense that he have the testimony of any person or persons, whose names must be given, and that such person or persons are so infirm, or otherwise physically incapacitated, or nonresident of this state, that he cannot procure their attendance at the trial or hearing of said cause. Upon the filing of said affidavit it shall be the duty of the clerk to appoint some responsible person to take the deposition of said person, which deposition may be read in the trial of said criminal action under the same rules as now apply

by law to depositions in civil actions: *Provided*, that the solicitor or prosecuting attorney of the district, county or town in which said suit is pending have ten days' notice of the taking of said deposition, who may appear in person or by a representative to conduct the cross-examination of such witness. (1911, c. 158; 1913, c. 137; 1915, c. 251.)

The amending act provides that it "shall not apply to the taking of depositions in courts of justice of the peace."

In this case the commission was issued to W. W. Brocks, instead of W. W. Brooks, and signed and certified by W. E. Brooks; but the person who was intended to act as commissioner was otherwise sufficiently identified, and plaintiff, if she had desired to be present, could easily have ascertained the place and time and the commissioner, by referring to the notice she received. *Held*: The depositions were improperly suppressed. *Hardy v. Insurance Co.*, 167 N. C. 22, 83 S. E. 5.

The signature of the witness to the deposition is not essential, if the deposition is otherwise regular and satisfactorily identified. *Boggs v. Mining Co.*, 162 N. C. 393, 78 S. E. 274.

For additional notes on this section see Supplement 1913.

### 1656.

Should the judge refuse to order the production of the paper it still rests within his discretion to compel the production of the writing later, or upon trial, when its competency and pertinency as evidence bearing on the issue may be better determined. *Evans v. R. R.*, 167 N. C. 415, 83 S. E. 617.

If the paper writing is one which is pertinent to the issue then the matter of ordering its production is confided by the statute to the sound discretion of the judge of the Superior Court, and his ruling will not be reviewed here. *Evans v. R. R.*, 167 N. C. 415, 83 S. E. 617.

As to whether a paper writing comes within the description of the statute is a question of law. It would seem that the affidavit in this case is not sufficient description of the paper to justify the court in ordering its production. *Evans v. R. R.*, 167 N. C. 415, 83 S. E. 617.

A mere statement that an examination is material and necessary is not sufficient. The facts showing the materiality and necessity must be stated positively and not argumentatively or inferentially. *Evans v. R. R.*, 167 N. C. 415, 83 S. E. 617.

Where a note sued on is alleged to be a forgery, the judge of the Superior Court wherein the action is pending may, in his discretion, allow, upon due notice, the defendant to inspect the note and take a photographic copy thereof. *Bank v. McArthur*, 165 N. C. 374, 81 S. E. 327.

If the paper writing sought to be produced is not of a kind which is pertinent to the issue, the court has no power to order its production. *Evans v. R. R.*, 167 N. C. 415, 83 S. E. 617.

It is within the sound legal discretion of the trial judge to refuse an application to inspect and photograph a note, the subject of the controversy, under this section. *Bank v. Newton*, 165 N. C. 363, 81 S. E. 317.

### 1658a.

For the rule prevailing prior to the enactment of this section, see *Boyd v. Leatherwood*, 165 N. C. 614, 81 S. E. 1025.



**1658b. Bills of lading as evidence.**

1. In all actions by or against common carriers in which it shall be thought necessary to introduce in evidence any bills of lading issued by said common carrier or by a connecting carrier, it shall be competent to introduce in evidence any paper-writing purporting to be the original bill of lading, or a duplicate thereof, upon proof that such paper purporting to be such bill of lading or duplicate was received in due course of mail from consignor or agent of said carrier or connecting carrier, or delivered by said common carrier to the consignee or other person entitled to the possession of the property for which said paper purports to be the bill of lading: *Provided*, that such purported bill of lading shall not be declared to be the bill of lading unless the said purported bill of lading is first exhibited by the plaintiff or his agent or attorney to the defendant or its attorney, or its agent upon which process may be served, ten days before the trial where the point of shipment is in the State, and twenty days when the point of shipment is without the State.

2. Upon said proof and introduction of said bill of lading, the due execution thereof shall be *prima facie* established. (1915, c. 287. In effect March 4, 1915.)

**1661.**

Amended, see Supplement 1913.

**1662.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**1672.**

For notes on this section see Supplement 1913.

**1673.**

For notes on this section see Supplement 1913.

**1674.**

For notes on this section see Supplement 1913.

**1675.**

Amended, see Supplement 1913.

**1679.**

For notes on this section see Supplement 1913.

**1684.**

For notes on this section see Supplement 1913.

**1685.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**1686a.**

For notes on this section see Supplement 1913.

1687 AMENDMENTS AND NOTES TO REVISAL

1687.

For notes on this section see Supplement 1913.

1689.

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

While our courts may not enforce here a contract declared void by our statutes or contrary to our public policy, it has no power to interfere in any manner with the enforcement by the courts of any other state of a contract valid according to its laws, or with their action to determine their validity. *Carpenter v. Hanes*, 167 N. C. 551, 83 S. E. 577.

It is the intention of both parties which will control as to whether the contract contemplated delivery of the goods or was a gambling agreement. *Holt v. Wellons*, 163 N. C. 124, 79 S. E. 450.

Cited but not construed in *Carpenter v. Hanes*, 162 N. C. 46, 77 S. E. 1101.

1690.

Cited but not construed in *Carpenter v. Hanes*, 162 N. C. 46, 77 S. E. 1101.

See notes to Sections 1689, 1691.

1691.

When the burden has been placed upon the plaintiff under this section a charge is not erroneous which instructs the jury that the evidence must be believed by them and produce in their minds a conviction that the contract was a *bona fide* one for the actual delivery of the goods. *Holt v. Wellons*, 163 N. C. 124, 79 S. E. 450.

Cited but not construed in *Carpenter v. Hanes*, 162 N. C. 46, 77 S. E. 1101.

For additional notes on this section see Supplement 1913.

1693.

For notes on this section see Supplement 1913.

1699.

For notes on this section see Supplement 1913.

1707.

In order to declare that a second enterer upon State's lands, and who takes a grant to the lands covered by the first entry, holds the lands in trust of the latter upon completing his entry, it is necessary that the prior entry sufficiently describe the land to give notice of its location and extent. *Wallace v. Barlow*, 165 N. C. 676, 81 S. E. 924. In this action the description filed with first entry held to be too vague and indefinite.

For additional notes on this section see Supplement 1913.

1708.

For notes on this section see Supplement 1913.

1709.

For notes on this section see Supplement 1913.

1716.

For notes on this section see Supplement 1913.



**1723.**

A plat of the land attached to the original grant is not conclusive, and cannot control the words of the grant. *Gunter v. Manufacturing Co.*, 166 N. C. 161, 81 S. E. 1070.

**1729.**

For notes on this section see Supplement 1913.

**1730.**

Cited but not construed in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

**1733.**

Repealed, see Supplement 1913. For notes on this section see Supplement 1913.

**1734.**

For notes on this section see Supplement 1913.

**1737.**

For notes on this section see Supplement 1913.

**1744.**

For notes on this section see Supplement 1913.

**1747.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**1748.**

For notes on this section see Supplement 1913.

**1750.**

For notes on this section see Supplement 1913.

**1757a. Relating to the records of grants in the office of the Secretary of State and to make certified copies thereof competent when offered in evidence.**

WHEREAS, for a long period of time many grants for lands in this State were duly issued in manner provided by law and records thereof were made and kept in the proper books for recording grants issued by the State, but in recording said grants the same were not copied in full upon said records; and

WHEREAS, in many instances the Secretary of State appears to have recorded only memoranda or abstracts of grants so issued, showing the number and date of the grant, the name of the grantee and the description of the lands conveyed, with the name of the Governor and the Secretary of State, but without reciting the Great Seal of State or indicating the same on the record; and

WHEREAS, in some instances the Secretary of State has also failed to indicate on the record the signature of the Governor and counter-signing by the Secretary of State, and has failed to recite or indicate the Great Seal of State on the record; and

WHEREAS, some question has arisen as to whether or not certified copies of such grants so recorded are competent to be offered in evidence in the courts of this State for the purpose of showing title out of the State of North Carolina; now, therefore,

*The General Assembly of North Carolina do enact:*

1. That for the purpose of showing title from the State of North Carolina to the grantee or grantees therein named and for the lands therein described, duly certified copies of all such grants and of all such memoranda and abstracts of grants shall be competent to be offered in evidence in the courts of this State or of the United States or of any territory of the United States, and in the absence of the production of the original grant, shall be conclusive evidence of a grant from the State to the grantee or grantees named and for the lands described therein.

2. That duly certified copies of such grants and of such memoranda and abstracts of grants may be recorded in the county where the lands therein described are situated, and the records thereof in such counties or certified copies thereof shall likewise be competent to be offered in evidence for the purpose of showing title from the State of North Carolina to the grantee or grantees named and for the lands therein described.

3. That all such records of grants and of such memoranda and abstracts of grants in the office of the Secretary of State are hereby validated and made of the same effect as if the same had been copied in full upon the record of grants in said office. (1915, c. 249. In effect March 9, 1915.)

1762.

Amended, see Supplement 1913.

1806.

For notes on this section see Supplement 1913.

1807.

For notes on this section see Supplement 1913.

1816.

Amended, see Supplement 1913.

1821.

For notes on this section see Supplement 1913.

1822.

For notes on this section see Supplement 1913.

1827.

Where in *habeas corpus* proceedings an adverse judgment presents questions of law or legal inference and amounts to the denial of a legal right it may be reviewed on *certiorari* under and by virtue of Article



IV, Section 8, of our Constitution. In the matter of Wiggins, 165 N. C. 457, 81 S. E. 626.

For additional notes on this section see Supplement 1913.

**1828.**

For notes on this section see Supplement 1913.

**1847.**

For notes on this section see Supplement 1913.

**1848.**

For notes on this section see Supplement 1913.

**1853.**

For notes on this section see Supplement 1913.

**1854.**

This section only allows an appeal in ordinary form in cases concerning the care and custody of children, and in other causes no such appeal will lie. In the matter of Wiggins, 165 N. C. 457, 81 S. E. 626.

On appeal, the judgment to transfer the custody of the child to the mother is suspended on giving the bonds required for appeal and super-sedeas by virtue of Sections 590 and 593. Page v. Page, 166 N. C. 90, 81 S. E. 1060.

Under its supervisory power, the Supreme Court may require the lower court to refrain from changing the custody of the child pending an appeal or from permitting it to be carried out of the state. Page v. Page, 166 N. C. 90, 81 S. E. 1060.

For additional notes on this section see Supplement 1913.

**1865.**

For notes on this section see Supplement 1913.

**1867.**

For notes on this section see Supplement 1913.

**1868.**

Repealed as to Davidson County (P. L. L. Ex. Sess. 1913, C. 257).  
For notes on this section see Supplement 1913.

**1869, 1870.**

For notes on these sections see Supplement 1913.

**1872.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**1874.**

For notes on this section see Supplement 1913.

**1881-1889.**

As practically every county has a different game law, a compilation of them has not been deemed of sufficient general interest for publication in this volume.

For notes on this section see Supplement 1913.

**1889b. States consent to regulations as to game animals on certain Government preserves.**

The consent of the General Assembly of North Carolina be, and hereby is, given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the Federal Government shall determine to be needful in respect to game animals, game and non-game birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the Act of Congress of March first, one thousand nine hundred and eleven, entitled "An act to enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (Thirty-sixth United States Statutes at Large, page nine hundred and sixty-one), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon. (1915, c. 205.)

**1890.**  
For notes on this section see Supplement 1913.

**1892.**  
Discussed in the concurring opinion of Allen, J., in *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430, at page 182.

**1897.**  
Discussed in the dissenting opinion of Walker, J., in *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430, at page 190.  
For additional notes on this section see Supplement 1913.

**1920.**  
For notes on this section see Supplement 1913.

**1930.**  
For notes on this section see Supplement 1913.

**1931.**  
For notes on this section see Supplement 1913.

**1932.**  
For notes on this section see Supplement 1913.

**1933.**  
For notes on this section see Supplement 1913.

**1934.**  
For notes on this section see Supplement 1913.

**1936.**  
For notes on this section see Supplement 1913.

**1951.**  
There are four constituent elements in a usurious contract:



1. A loan or forbearance of money, either express or implied.
2. An understanding between the parties that the principal shall be or may be returned.
3. That for such loan or forbearance a greater profit than is authorized by law shall be paid or agreed to be paid.
4. That the contract is entered into with an intention to violate the law. *MacRackan v. Bank*, 164 N. C. 24, 80 S. E. 184.

The principle *in pari delicto* does not apply to borrowers under this section. *MacRackan v. Bank*, 164 N. C. 24, 80 S. E. 184.

A borrower from a bank, paying usurious interest, is entitled to the benefit of this section, notwithstanding the fact that he is a member of its board of directors, and of its managing and loan committee. *MacRackan v. Bank*, 164 N. C. 24, 80 S. E. 184.

When the illegal purpose stands clearly revealed on the face of the instrument, as in this case, no further inquiry into the intent is required. The contract itself establishes the corrupt intent, as it is susceptible of no other meaning. *MacRackan v. Bank*, 164 N. C. 24, 80 S. E. 184.

The corrupt intent consists in the charging or receiving the excessive interest with the knowledge that it is prohibited by law, and the purpose to violate it. *MacRackan v. Bank*, 164 N. C. 24, 80 S. E. 184.

Interest by way of discount may be taken in advance for short periods, and the term of one year is properly considered as coming within the rule. *Crowell v. Jones*, 167 N. C. 386, 83 S. E. 551.

A stipulation for paying the highest legal rate per month will not be considered as a violation of the usury statutes as ordinarily framed. *Crowell v. Jones*, 167 N. C. 386, 83 S. E. 551.

For additional notes on this section see Supplement 1913.

## 1952.

For notes on this section see Supplement 1913.

## 1954.

The rule of this section applies whenever a recovery is had for breach of contract and the amount is ascertained from the terms of the contract itself or from evidence relative to the inquiry, and due by one party to the contract to another. *Bond v. Cotton Mills*, 166 N. C. 20, 81 S. E. 936.

In cases not coming within this statutory provision, the principle prevails here and elsewhere, that interest by way of damages is not allowed as a conclusion of law unless there has been some adequate default on the part of a debtor in reference to withholding the principal sum or part of it. *Bond v. Cotton Mills*, 166 N. C. 20, 81 S. E. 936.

The amount due by the owner of a building, under Section 2019, is not a sum of money due by contract within the meaning of this section so as to make it carry interest. *Bond v. Cotton Mill*, 166 N. C. 20, 81 S. E. 936.

In the absence of an award by the jury, damages for land taken under the right of eminent domain bear interest only from the rendition of the judgment. *R. R. v. Manufacturing Co.*, 166 N. C. 168, 82 S. E. 5.

For additional notes on this section see Supplement 1913.

## 1957.

For notes on this section see Supplement 1913.

**1959.**

Amended as to Randolph county only. P. L. L. 1915, c. 744.  
For notes on this section see Supplement 1913.

**1960.**

For notes on this section see Supplement 1913.

**1964.**

For notes on this section see Supplement 1913.

**1966.**

It seems that where the appellant has not exhausted his peremptory challenges, his exception to the competency of a juror is untenable. *Walters v. Lumber Co.*, 165 N. C. 388, 81 S. E. 453.

An employee of a casualty company which is practically a defendant because it has insured the defendant in respect to the plaintiff's accident, is incompetent as a juror. *Walters v. Lumber Co.*, 165 N. C. 388, 81 S. E. 453.

In an action to recover damages from a corporation for a personal injury it is reversible error for the trial judge to permit the plaintiff's attorney to ask the jurors whether any of them is employed by any indemnity company that insures against liability for a personal injury, when there is no indication or evidence that the defendant was insured against such loss. *Starr v. Oil Co.*, 165 N. C. 587, 81 S. E. 776.

For additional notes on this section see Supplement 1913.

**1967. Tales jurors summoned; qualifications.**

That there may not be a defect of jurors, the sheriff shall by order of court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be drawn from the jury box used in drawing the petit jury for the term, in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day: *Provided*, that the judge may upon his own motion, or upon request of counsel for either plaintiff or defendant, instruct the sheriff to summon such jurors outside of the courthouse. It shall be a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit, or tales juror within two years next preceding such term of the court. (1911, c. 15; 1915, c. 210.)

A motion to set aside a verdict because of a defect as to one of the jurors comes too late after verdict and is addressed to the discretion of the trial judge, which is not reviewable. *S. v. Drakeford*, 162 N. C. 667, 78 S. E. 308.

It seems that an objection that one of the jurors was on the grand jury which found an indictment against the prisoner comes too late after verdict. *S. v. Drakeford*, 162 N. C. 667, 78 S. E. 308.

For additional notes on this section see Supplement 1913.

**1970.**

An indictment will not be quashed because the foreman was interested



therein when it appears that he did nothing in regard to it except to sign it, and to carry it into open court. *State v. Pitt*, 166 N. C. 268, 80 S. E. 1060.

For additional notes on this section see Supplement 1913.

**1973.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

See Section 884a, allowing service by telephone in certain cases.

**1974.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**1976.**

See Section 884a, allowing service by telephone in certain cases.

**1980. Exemptions from jury duty.**

No practicing physician, licensed druggist, telegraph operator who is in the regular employ of any telegraph company or railroad company, train dispatcher who has the actual handling of either freight or passenger trains, regularly licensed pilot, regular minister of the gospel, officer or employee of a state hospital for the insane, or active member of a fire company, printers and linotype operators and all United States railway postal clerks and rural free delivery mail carriers, locomotive engineers and railroad conductors in active service, funeral directors and embalmers, shall be required to serve as a juror: *Provided*, that the board of county commissioners of any county in North Carolina may, in their discretion, exempt any ex-Confederate soldier in their county from jury duty, who shall apply to them for exemption.

That all millers of grist mills also be excused from jury service. (1909, cc. 338, 868; 1915, cc. 228, 260.)

For notes on this section see Supplement 1913.

**1981a. Regulating and restricting child labor in manufacturing establishments and regulating the hours of labor.**

1. No child under twelve years of age shall be employed or worked in any factory or manufacturing establishment within this State: *Provided, further*, that after one thousand nine hundred and seven no child between the ages of twelve and thirteen years of age shall be employed or work in a factory except in apprenticeship capacity, and only then after having attended school four months in the preceding twelve months. (1907, c. 463.)

2. Sixty hours shall constitute a week's work in all factories and manufacturing establishments of the State, and that no minor nor woman shall be worked in such factory or establishment a longer period than sixty hours in one week and no adult male shall be worked in such factory or establishment for a longer period than sixty hours in one week unless there shall be a written contract entered into between

said adult male and his employer to that effect in which the employer shall agree to pay said adult male extra compensation for extra hours he may work. That no employee in any factory or manufacturer's establishment in this State shall be worked exceeding eleven hours in any one day: *Provided*, this section shall not apply to engineers, firemen, superintendents, overseers, section and yard hands, office men, watchmen or repairers of break-down. (1907, c. 463; 1911, c. 85; 1915, c. 148.)

3. All parents or persons standing in the relation of parent upon hiring their children to any factory or manufacturing establishment, shall furnish such establishment a written statement of the age of such child or children being so hired, and certificates as to school attendance; and any parent or person standing in the relation of parent to such child or children, who shall in such written statement, misstate the age of such child or children, being so employed, or their school attendance, shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court. Any mill owner, superintendent, boss or manufacturing establishment, who shall knowingly or wilfully violate the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court: *Provided*, that for a second conviction under this act within twelve months the fine shall not be less than five hundred dollars, or the imprisonment not less than ninety days. (1907, c. 463; 1915, c. 148.)

4. After one thousand nine hundred and seven no boy or girl under fourteen years old shall work in a factory between the hours of eight P. M. and five A. M. (1907, c. 463.)

For penalty for employing a child under twelve years of age in a factory or manufacturing establishment, see Section 3362.

It is immaterial that the child is not on the regular payroll if he is permitted to work at the mill to the knowledge of the owner, superintendent, or other agent, fairly representative of the management, or if he worked there so openly and continuously that the management should have observed and noticed his occupation and conduct. *McGowan v. Manufacturing Co.*, 167 N. C. 192, 82 S. E. 1028.

The breach of this statute constitutes actionable negligence wherever it is shown that the injuries were sustained as a consequence of the wrongful employment of the child in the factory, in violation of the law. *McGowan v. Manufacturing Co.*, 167 N. C. 192, 82 S. E. 1028.

For additional notes on this section see Supplement 1913.

#### 1981b.

The act of which this section was a part will be found in full, as amended, as Section 1981a.

#### 1981c.

The act of which this section was a part will be found in full, as amended, as Section 1981a.



**1981d.**

The act of which this section was a part will be found in full, as amended, as Section 1981a.

**1981e.**

The act of which this section was a part will be found in full, as amended, as Section 1981a.

**1981ee(3).**

Cited but not construed in *Robinson v. Mfg. Co.*, 165 N. C. 495, 81 S. E. 681.

**1981f.**

Repealed, see Supplement 1913. For notes on this section see Supplement 1913.

**1984.**

For notes on this section see Supplement 1913.

**1990.**

Under this section the remainderman is entitled to a part of the rent for the rental year in proportion to the time that elapsed after the death of the life tenant as compared with the time that elapsed before his death. *Hayes v. Wrenn*, 167 N. C. 229, 83 S. E. 356.

**1993.**

Where a landlord merely releases a part of the crop in favor of a vendor of his tenant, without transferring any part of the debt the rights of the vendor are subject to a mortgage upon the crop to secure advances to the tenant. *White v. Winslow*, 163 N. C. 40, 79 S. E. 261.

In this case the tenant having paid the rent, the seizure of the crop by one who has taken an assignment for advances was held not to be unlawful. *McCullins v. Cheatham*, 163 N. C. 61, 79 S. E. 306.

**2001.**

Amended, see Supplement 1913.

When in the course of the trial it develops that a title to land is in dispute, the justice should dismiss the action. *McLaurin v. McIntyre*, 167 N. C. 350, 83 S. E. 627; *McIver v. R. R.*, 163 N. C. 544, 79 S. E. 1107.

When upon appeal from a justice court, the Superior Court finds it a fact that the title to the real estate is in controversy, it should dismiss the action. *McLaurin v. McIntyre*, 167 N. C. 350, 83 S. E. 627.

The summary remedy under this and the succeeding section is restricted to cases where the relation between the parties is that of landlord and tenant. *McIver v. R. R.*, 163 N. C. 544, 79 S. E. 1107.

The remedy by summary proceedings in ejectment given by the landlord and tenant act, is not coextensive with the doctrine of estoppel arising where one enters and holds lands under another, but is restricted to the case expressly specified in the act, and where the relation between the parties is simply that of landlord and tenant, and when, on the trial of such a proceeding, it is made to appear that the relation existing is that of a mortgagor and mortgagee, giving the right to an account, or vendor and vendee, requiring an adjustment of equities, a justice's court has no jurisdiction of such questions, and the proceeding should be dismissed. *McLaurin v. McIntyre*, 167 N. C. 350, 83 S. E. 627.

For additional notes on this section see Supplement 1913.

## 2006.

For notes on this section see Supplement 1913.

## 2008.

For notes on this section see Supplement 1913.

## 2011a.

1. This act is not in derogation of common right, but is a remedial statute and to be liberally construed. *Cape Lookout Co. v. Gold*, 167 N. C. 63, 83 S. E. 3.

For a discussion of the various systems of land registration, see opinion of Clark, C. J., in *Cape Lookout Co. v. Gold*, 167 N. C. 63, 83 S. E. 3.

For cases bearing upon the constitutionality of the land registration systems of the states mentioned, similar to this section, see *People v. Chase*, 165 Ill. 527, 36 L. R. A. 105; *State v. Guilbert*, 56 Ohio St. 575, 38 L. R. A. 519; *People v. Simon*, 176 Ill. 165, 44 L. R. A. 801; *Tylor v. Judges*, 175 Mass. 71, 55 N. E. 812; *State v. Westfall*, 85 Minn. 437, 89 N. W. 175, 57 L. R. A. 297; *National Bond Co. v. Hopkins*, 96 Minn. 119, 104 N. W. 678; *Robinson v. Kerrigan*, 151 Cal. 41, 90 Pac. 129; *People v. Crissman*, 41 Colo. 450, 92 Pac. 949; *McMahon v. Rowley*, 238 Ill. 31, 87 N. E. 66; *Brooke v. Gloss*, 243 Ill. 392, 90 N. E. 751; *Waugh v. Gloss*, 246 Ill. 604, 92 N. E. 974; *Peters v. Duluth*, 119 Minn. 96, 137 N. W. 390; *Tower v. Gloss*, 256 Ill. 121, 99 N. E. 876; *American Land Co. v. Zeiss*, 219 U. S. 44.

6. A summons dated July the 9th and returnable September the 9th, is sufficient as to the return day. *Cape Lookout Co. v. Gold*, 167 N. C. 63, 83 S. E. 3.

**(7). Publication of notice of summons; contents; proof of, necessary; recitals in decree.**

In addition to the summons issued, prescribed in the foregoing section, the clerk of the court shall, at the time of issuing such summons, publish a notice of the filing thereof containing the name or names of the petitioners, the name or names of all persons named in the petition, together with a short but accurate description of the land and the relief demanded, in some secular newspaper published in the county wherein the land is situate, and having general circulation in said county; and if there be no such paper, then in a newspaper in the county nearest thereto, and having general circulation in the county wherein the land lies, once a week for eight (8) issues of such paper: *Provided*, such advertisement shall not cost more than five dollars. Said notice shall set forth the title of the cause and in capital letters the words, "To whom it may concern," and shall give notice to all persons of the relief demanded and the return day of the summons: *Provided*, that no final order or judgment shall be entered in the cause until there is proof and adjudication of publication as in other cases of publication of notice of summons. The provisions of this section, in respect to the issuing and service of summons and the publication of the notice, shall be mandatory and essential to the jurisdiction of the court to proceed



in the cause: *Provided*, that the recital of the service of summons and the publication in the decree or in the final judgment in the cause, and in the certificate issued to the petitioner as hereinafter provided, shall be conclusive evidence thereof. (1913, c. 90, s. 7; 1915, c. 128.)

The amending act provides that "This act shall be in full force and effect from and after its ratification, but shall only apply to proceedings brought after the first day of March, A. D. nineteen hundred and fifteen."

The provision of this section that a notice shall be published "at the time of issuing such summons" is sufficiently complied with when the notice appears in the first issue of a paper which is printed after the summons were issued. *Cape Lookout Co. v. Gold*, 167 N. C. 63, 83 S. E. 3.

It would seem a reasonable construction of this statute that the notice should be published for four weeks, in the manner prescribed, between the issuing of the summons and the return day thereof. Per *Clark*, C. J., in *Cape Lookout Co. v. Gold*, 167 N. C. 63, 83 S. E. 3.

**(14). Transfer as security for debt; construction of short form of transfer; adverse claims noted.**

Whenever the owner of any registered estate shall desire to convey same as security for debt, it may be done in the following manner, by a short form of transfer, substantially as follows, to wit:

"A B and wife (giving names of all owners or holders of certificates and their wife or wives) hereby transfer to C D the tract or lot of land described as No. .... in registration of titles book for ..... county, a certificate for the title for same being hereto attached, to secure a debt of ..... dollars, due to ....., of ..... county and state, on the ..... day of ....., 19...., evidenced by bond (or otherwise as the case may be) dated the ..... day of ....., 19.... In case of default in payment of said debt, with accrued interest, ..... days notice of sale required." That same shall be signed and properly acknowledged by the parties making the same, and shall be presented, together with the owner's certificate, to the register of deeds, whose duty it shall be to note upon the owner's certificate and upon the certificate of title in said registration of titles book the name of the trustee, the amount of debt, and the date of maturity of same: *Provided*, that when a part of the registered estate shall be so conveyed, the register of deeds shall note upon the said book and owner's certificate the part so conveyed, and if the same be required and the proper fee paid by the trustee, shall issue what shall be known as a partial certificate, over his hand and seal, setting out the portion so conveyed; that all transfers by the said short form shall convey the power of sale upon due advertisement at the county courthouse and in some newspaper published in the county, or adjoining county, in the same manner and as fully as is now provided by law in the case of mortgages and deeds of trust and default therein. All registered encumbrances, rights or adverse claims affecting the estate represented thereby shall continue

to be noted, not only upon the certificate of title in the registration book, but also upon the owner's certificate, until same shall have been released or discharged. And in the event of second or other subsequent voluntary encumbrances the holder of the certificate may be required to produce such certificate for the entry thereon or attachment thereto of the note of such subsequent charge or encumbrance as provided by section twenty of this act: *Provided*, nothing in this section nor this act shall be construed to prevent the owner from conveying said land, or any part of the same, as security for a debt by deed of trust or mortgage in any form, which may be agreed upon between the parties thereto, and having said deed of trust or mortgage recorded in the office of the register of deeds as other deeds of trust and mortgages are recorded: *Provided, further*, that the book and page of said record at which said deed of trust or mortgage is recorded shall be entered by the register of deeds upon the owner's certificate and also on said registration of titles book. (1913, c. 90, s. 14; 1915, c. 245.)

**2016.**

Where the contractor has abandoned his contract, and the owner has completed the building, the amount due the contractor is the contract price less the amount paid to him, and the reasonable cost of completing the house. *Bain v. Lamb*, 167 N. C. 304, 83 S. E. 466.

A deed of trust given subsequent to the date of a building contract, but prior to the time when work was first commenced, and materials furnished under the contract takes priority over a lien acquired by the mechanic under this section. *McAdams v. Trust Co.*, 167 N. C. 494, 83 S. E. 623.

The right of lien is not lost by accepting a note for the amount due when the note matures before the expiration of the time required to file the lien, and the lien is then perfected as the statute requires. *Lumber Co. v. Trading Co.*, 163 N. C. 315, 79 S. E. 627.

When it does not appear that the mechanic made any repairs, or did any work on any of the property on which he claims a lien, he is not entitled to the lien. *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

For a history of the lien laws which are now codified in this section, see *Manufacturing Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

For additional notes on this section see Supplement 1913.

**2017.**

Under this statute, if the mechanic or artisan surrenders possession of the property, he loses his lien. *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

**2018.**

Amended, see Supplement 1913.

This section applies only to laborers "constructing railroads." *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

For additional notes on this section see Supplement 1913.

**2019.**

The amendment to this section applicable to Durham, Rowan, Guilford and Randolph Counties, noted in the Supplement, 1913, was held



in *Supply Co. v. Eastern Star Home*, 163 N. C. 513, 79 S. E. 964, to be contradictory, self-destructive and void.

Where there are no funds in the hands of the owner due the contractor at the time notice of claim is given, such claim cannot be a lien on the property of the owner. *Supply Co. v. Eastern Star Home*, 163 N. C. 513, 79 S. E. 964.

The amount due by the owner under this section is not a debt due in the ordinary sense, bringing plaintiff's claims within the meaning of the statutory provision as to interest (Section 1954). *Bond v. Cotton Mills*, 166 N. C. 20, 81 S. E. 936.

The amount due by the owner under this section is considered as a trust fund, to be distributed, under the statute, among the creditors who shall make the proper proof as to the amount and status of their claims. *Bond v. Cotton Mills*, 166 N. C. 20, 81 S. E. 936.

Cited but not construed in *Mfg. Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

For additional notes on this section see Supplement 1913.

## 2020.

Though the owner may be entitled to greater particularity in the statement of the claims than she has received, a letter in which she states that she will reserve the mechanic's bill "for settlement," will be a waiver of the right. *Bain v. Lamb*, 167 N. C. 304, 83 S. E. 466.

In this case it was held that certain letters in evidence furnish evidence in the nature of an admission that the material was used in building the house of the defendant. *Bain v. Lamb*, 167 N. C. 304, 83 S. E. 466.

It seems that a letter sent by mail may be sufficient notice under this section. *Bain v. Lamb*, 167 N. C. 304, 83 S. E. 466.

The amendment to this section applicable to Durham, Rowan, Guilford and Randolph Counties, noted in the Supplement, 1913, was held in *Supply Co. v. Eastern Star Home*, 163 N. C. 513, 79 S. E. 964, to be contradictory, self-destructive and void.

See notes to Section 2019.

Cited but not construed in *Mfg. Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

For additional notes on this section see Supplement 1913.

## 2020a. Counties, cities and towns to require bond of contractor.

Every county, city, town or other municipal corporation which shall let a contract for the building, repairing or altering of any building, public road or street, shall require the contractor for such work (when the contract price exceeds five hundred dollars) to execute bond with one or more solvent sureties before beginning any work under said contract, payable to said county, city, town or other municipal corporation, and conditioned for the payment of all labor done on and material and supplies furnished for the said work, and the amount of the said bond to be given by said contractor shall be equal to the contract price up to two thousand dollars, and when the contract price is between two and ten thousand dollars the amount of said bond shall be two thousand dollars plus thirty-five per cent of the excess of the contract price over two thousand dollars and under ten thousand; when the contract is over ten thousand dollars, the amount of the said

bond shall be two thousand dollars plus twenty-five per cent of the excess of the contract price over the sum of two thousand dollars, and if the official of the said county, city, town or other municipal corporation, whose duty it shall be to take said bond, shall fail to require the said bond herein provided to be given, he shall be guilty of a misdemeanor. Any laborer doing work on said building and material man furnishing material therefor and used therein, shall have the right to sue on said bond, the principal and sureties thereof, in the courts of this state having jurisdiction of the amount of said bond, and any number of laborers or material men whose claims are unpaid for work done and material furnished in said building, shall have the right to join in one suit upon said bond for the recovery of the amounts due them respectively. (1913, c. 150, s. 2; Ex. Sess. 1913, c. 9; 1915, c. 191.)

**2021.**

Amended, see Supplement 1913.

The amendment to this section applicable to Durham, Rowan, Guilford and Randolph Counties, noted in the Supplement, 1913, was held in *Supply Co. v. Eastern Star Home*, 163 N. C. 513, 79 S. E. 964, to be contradictory, self-destructive and void.

This section applies only where the contractor's business is to build, alter, or repair any building, vessel or railroad. *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

See notes to Section 2019.

Cited but not construed in *Mfg. Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

For additional notes on this section see Supplement 1913.

**2022.**

Cited but not construed in *Mfg. Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

**2023.**

Amended, see Supplement 1913.

For history of this section, see *Manufacturing Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

There is no conflict between this section and Section 2035. That section relates to liens required to be filed with the proper officers, and does not affect the provisions as to subcontractors, who acquire a lien by notice to the owner under this section. *Manufacturing Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

**2023a.**

An employee in a blacksmith shop of a logging company, who made small repairs from time to time on the cars which were used in hauling out the logs from the woods, is not entitled to a lien on the logs under this section. *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

Under this section, a section hand who works upon a railroad of a logging company, repairing its tracks, trestles and bridges, etc., is not entitled to a lien upon the lumber produced. *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

A laborer who works in the band saw mill of a lumber company, re-



ceiving the plank as it falls from the saw and placing it upon the mechanical devise, is entitled to the benefit of this section. *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

The lien given by this section is superior to the lien given to the contractor thereto, or any other person. *Glazener v. Lumber Co.*, 167 N. C. 676, 83 S. E. 606.

**2024. Season of sire a lien on.**

In all cases where the owner or any agent for, or employee of the owner of any mare, jenett, cow, or sow, shall turn the same to a stud-horse, jack, bull, or boar, for the purpose of raising colts, calves, or pigs, the price charged for the season of the stud-horse, jack, bull, or boar shall constitute a lien on the colt, calf, or pigs, until the price so charged for the season is paid. (1915, c. 18.)

For notes on this section see Supplement 1913.

**2025. Not exempt from execution.**

The colt, calf, or pigs, shall not be exempt from execution for the payment of said season price by reason of the operation of the personal property exemption: *Provided*, that the person claiming such lien shall institute an action to enforce the same within six months from the foaling of the colt, dropping of the calf, or farrowing of the pigs. (1915, c. 18. In effect January 1, 1916.)

For notes on this section see Supplement 1913.

**2026.**

For notes on this section see Supplement 1913.

**2027.**

The costs of an action in the nature of a creditor's bill, by material men claiming under the statutory lien the unpaid balance due by the owner of a dwelling to his contractor for its erection, should be paid out of the fund held for distribution. *Bond v. Cotton Mill*, 166 N. C. 20, 81 S. E. 936.

For additional notes on this section see Supplement 1913.

**2028.**

Amended, see Supplement 1913.

The amendment to this section applicable to Durham, Rowan, Guilford and Randolph Counties, noted in the Supplement, 1913, was held in *Supply Co. v. Eastern Star Home*, 163 N. C. 513, 79 S. E. 964, to be contradictory, self-destructive and void.

For a case construing this section as it stood subsequent to the amendment of 1909, but prior to the amendment of 1913, see *Lumber Co. v. Trading Co.*, 163 N. C. 314, 79 S. E. 627.

For additional notes on this section see Supplement 1913.

**2029.**

For notes on this section see Supplement 1913.

**2035.**

This section relates to liens required to be filed with the proper officers and does not affect the provisions as to subcontractors, who acquire

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a lien by notice to the owner under Section 2023. There is no conflict between the two sections. *Manufacturing Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

For history of this section, see *Manufacturing Co. v. Andrews*, 165 N. C. 285, 81 S. E. 418.

**2037.**

Cited but not construed in *S. v. Hill*, 166 N. C. 298, 81 S. E. 408.

**2040.**

Amended, see Supplement 1913.

**2052.**

For notes on this section see Supplement 1913.

**2055.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2058.**

An action to recover upon an account for spirituous liquors sold and delivered here for the purposes of sale cannot be maintained in the courts of this State; and the fact that the contract was made in a State recognizing its validity does not alter the matter. *Bluthenthal v. Kennedy*, 165 N. C. 372, 81 S. E. 337.

A bank may not resist recovery of the money it has collected for a distilling company upon the ground that the sales for which the money was collected were contrary to law. *Distilling Co. v. Bank*, 163 N. C. 66, 79 S. E. 287.

For evidence held sufficient to constitute a sale, see *State v. Caldwell*, 166 N. C. 309, 81 S. E. 628.

For additional notes on this section see Supplement 1913.

**2058c. Pharmacists may dispense on prescription.**

(Repealed. 1915, c. 97, s. 8. See Section 2058h(8)).

**2058f.**

Cited but not construed in *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

**2058g. Manufacture and sale of certain malt prohibited.**

1. It shall be unlawful for any person, firm or corporation, or any agent, officer or employee thereof, to manufacture or sell malt, such as is used in the manufacture of spirituous liquors, in the State of North Carolina.

2. All express companies, railroad companies, or other transportation companies, doing business in this State, are required to keep a separate record of all shipments of such malt, in which shall be entered immediately upon receipt thereof, the name of the person to whom shipped, the amount of each shipment, the date when received and the date when delivered, and by whom delivered and to whom delivered, which record shall be open for the inspection of any officer of the State, county or municipality any time during business hours of the company.



3. Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor. (1915, c. 91. In effect March 5, 1915.)

**2058h. Receipt and use of intoxicating liquors restricted.**

1. It shall be unlawful for any person, firm, or corporation, or any agent, officer or employee thereof, to ship, transport, carry or deliver, in any manner or by any means whatsoever, for hire or otherwise, in any one package or at any one time from a point within or without this State to any person, firm, or corporation in this State any spirituous or vinous liquors or intoxicating bitters in a quantity greater than one quart, or any malt liquors in a quantity greater than five gallons; and it shall be unlawful for any spirituous or vinous liquors or intoxicating bitters so shipped, transported, carried or delivered in any one package to be contained in more than one receptacle.

2. It shall be unlawful for any person, firm, or corporation at any one time, or in any one package to receive at a point within the State of North Carolina for his or her use or for the use of any person, firm or corporation, or for any other purpose, any spirituous or vinous liquors or intoxicating bitters in a quantity greater than one quart or any malt liquors in a quantity greater than five gallons.

3. It shall be unlawful for any person, firm or corporation, during the space of fifteen consecutive days to receive any spirituous or vinous liquors or intoxicating bitters in a quantity or quantities totalling more than one quart, or any malt liquors in a quantity greater than five gallons: *Provided*, that the provisions of sections one, two and three shall not apply to the receipt by a common carrier for transportation to a point in another state where delivery is not forbidden by the laws of such state.

4. The words "malt liquors" as used in this act shall be construed to include only such malt liquors as contain not to exceed five per centum of alcohol and any malt liquors containing more than five per centum of alcohol shall be held to be "spirituous liquors" within the meaning of this act.

5. It shall be unlawful for any person to order in a fictitious name or in the name of another any spirituous or vinous or malt liquors or intoxicating bitters or to receive for himself any spirituous or vinous or malt liquors or intoxicating bitters so ordered or shipped.

6. It shall be unlawful for any person to allow or in any way permit the use of his name in the ordering for another or the delivery to another of any spirituous or vinous or malt liquors or intoxicating bitters.

7. It shall be unlawful for any person, firm or corporation to serve with meals, or otherwise, any spirituous, vinous, fermented or malt liquors or intoxicating bitters where any charge is made for such meal or service.

8. All laws authorizing or allowing the sale of spirituous, vinous, or malt liquors or intoxicating bitters by any medical depository, druggist or pharmacist be and the same are hereby repealed, and it shall be unlawful for any medical depository, druggist or pharmacist to sell or otherwise dispose of for gain any spirituous, vinous, fermented or malt liquors or intoxicating bitters: *Provided*, that any medical depository now authorized by law shall be allowed to dispose of any liquors on hand at the time this act goes into effect by selling and shipping same to any person, firm or corporation in any state other than North Carolina where such sale would not be illegal.

9. The provisions of this act shall not apply to grain alcohol received by duly licensed physicians, druggists, dental surgeons, college, university and State laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes, when obtained as hereinafter provided: *Provided, however*, that nothing contained in this act shall prohibit the importation into the State of North Carolina and the delivery and possession in said State for use in industry, manufactures, and arts of any denatured alcohol or other denatured spirits, which are compounded and made in accordance with formulae prescribed by acts of Congress of the United States and regulations made under authority thereof by the treasury department of said United States and the commissioner of internal revenue thereof, and which are not now subject to internal revenue tax levied by the government of said United States: *Provided, further*, that this act shall not apply to wines and liquors required and used by hospitals or sanatoria *bona fide* established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoria for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing.

10. Manufacturers of medicine, duly licensed physicians, hospitals, dental surgeons, college, university, and State laboratories and druggists may make written application to the clerk of the superior court of the county for a permit to receive by transportation by a common carrier grain alcohol intended to be used for surgical purposes and in compounding, mixing, or preserving medicines and medical preparations. Such permit shall then be granted by the clerk or his duly appointed deputy, who shall affix the seal of his office thereto, and said permit shall contain the name of the applicant to whom the shipment is to be delivered, the place from which the shipment is to be made, the amount to be shipped, and the date of the granting of the permit. The said permit shall be executed in duplicate. The original shall be delivered to



the applicant to be sent by him to the shipper, to be pasted on the outside of the package containing alcohol.

11. A permit, issued as above, when attached to and plainly affixed in a conspicuous place to any package or parcel containing grain alcohol transported within this State shall authorize any common carrier within the State to transport the package or parcel to which such permit is attached or affixed, containing only alcohol mentioned in said permit, and to deliver the same to the person, firm, or corporation to which such permit was issued.

12. The duplicate copy of said permit, together with the application therefor, as hereinbefore provided shall be filed in the office of the clerk of the superior court chronologically and alphabetically with regard to the name of the applicant, and the application and permit shall at all times be subject to the inspection of any citizen or officer of the State, county, or municipality; and for his services the clerk of the superior court shall be entitled to a fee of fifty cents, to be paid by the applicant.

13. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor.

14. Nothing in this act shall be construed to impair or repeal any laws prohibiting the sale of intoxicating liquors or any laws making the place of delivery the place of sale, nor shall it be construed to repeal any laws prohibiting the transportation, delivery or receipt of intoxicating liquors in any county or counties in this State. (1915, c. 97. In effect April 1, 1915.)

**2059b. Sale of vehicles used in carrying, concealing or removing intoxicating liquors.**

1. If any person, firm, association, or corporation shall have or keep in his, their or its possession any spirituous, vinous or malt liquors in violation of any State law now existing or which shall become operative within twelve months after the ratification of this act, the sheriff or other officer of any county, city or town, who shall seize such liquors as provided by chapter forty-four, Public Laws of the year one thousand nine hundred and thirteen, or by any other authority provided by law, is hereby authorized and required to seize and take into his custody any vessel, boat, cart, carriage, automobile and all horses and other animals or things used in conveying, concealing or removing such spirituous, vinous or malt liquors and safely keep the same until the guilt or innocence of the defendant has been determined upon his said trial for the violation of any such law making it unlawful to so keep in his, their or its possession any spirituous, vinous or malt liquors, and upon conviction of a violation of said law, said defendant shall forfeit and lose all right, title and interest in and to the said property so seized; and it shall be the duty of the sheriff having in possession said vessel, boat, cart, carriage, automobile and all horses and other animals or things so used in conveying, concealing or removing such spirituous,

vinous or malt liquors, to advertise and sell same under the laws governing the sale of personal property under execution.

2. In the event the sheriff or other officers shall, at the time of seizing said spirituous, vinous or malt liquors, fail to capture or arrest the owner or party in possession and so using said vessel, boat, cart, carriage, automobile and all horses and other animals or thing to convey, conceal or remove said spirituous, vinous or malt liquors, he shall advertise for the owner or owners to come forward and institute the proper proceeding to secure possession of said property, and upon the failure of any person to so come forward and surrender himself to the sheriff to the end that the question of whether said property was used as set out in this act, and upon the failure of such person to come forward, if an individual, in person, and make such claim within thirty days after such notice shall have appeared in at least one issue of some newspaper published in the county where such seizure was made, and after such notice and time the sheriff shall advertise such property so seized for sale, and sell as provided in section one of this act.

3. The proceeds derived from the sale of such property, after paying for the reasonable expenses of such sale, shall be paid by the sheriff to the county treasurer, and be applied by the treasurer to the credit of the public school fund of said county. (1915, c. 197. In effect March 9, 1915.)

#### 2060.

For notes on this section see Supplement 1913.

#### 2063. License issued to druggists.

(Repealed. 1915, c. 97, s. 8. See Section 2058h(8)).

See notes to Section 2065.

#### 2064.

See notes to Section 2065.

Section 2063 having been repealed (see Section 2058h(8)), it would seem that this section has become obsolete.

#### 2065.

A license issued by the sheriff to a druggist to sell intoxicating liquors, without meeting the requirements of this section and Sections 2063 and 2064, is void, and a sale made under such invalid license is a violation of the prohibition law. *Smith v. Express Co.*, 166 N. C. 155, 82 S. E. 15.

A license issued under this section may be impeached in any action which directly involves its validity and which gives the claimant a trial by jury on the issue. *Smith v. Express Co.*, 166 N. C. 155, 82 S. E. 15.

The county commissioners is the body vested with discretion on this subject, and the sheriff is only a ministerial agent. *Smith v. Express Co.*, 166 N. C. 155, 82 S. E. 15.

Section 2063 having been repealed (see Section 2058h(8)), it would seem that this section has become obsolete.



## 2080.

Cited but not construed in *S. v. Cardwell*, 166 N. C. 309, 81 S. E. 628.

For notes on this section see Supplement 1913.

## 2080b.

Testimony that the defendant did not have any business is competent upon the question as to whether he was a druggist, etc. *State v. Moore*, 166 N. C. 284, 81 S. E. 294.

The recorder's court of Edgecombe County has jurisdiction over offenses committed under this act. *S. v. Denton*, 164 N. C. 530, 80 S. E. 401.

For instruction held to be correct under this act, see *S. v. Russell*, 164 N. C. 482, 80 S. E. 66.

Cited but not construed in *S. v. Watkins*, 164 N. C. 425, 79 S. E. 619.

1. A warrant under this subsection need not allege that the defendant is not a druggist or a medical depository. *State v. Moore*, 166 N. C. 284, 81 S. E. 294.

2. The possession referred to in this subsection may be either actual or constructive; and possession by the agent will be deemed the possession of the principal for the purposes of the act. *S. v. Lee*, 164 N. C. 533, 80 S. E. 405.

A person indicted and tried under this section may not be convicted under the provisions of Chapter 133, Laws 1911, known as the "Club Act." (See section 2058f.) *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

This section does not deprive the prisoner of the common-law presumption of innocence and of the full benefit of the doctrine of reasonable doubt, or cast upon him the burden of showing his innocence. *S. v. Russell*, 164 N. C. 482, 80 S. E. 66.

A charge, that having possession of a gallon of liquor or more is evidence that the defendant had it for sale, is erroneous, as the statute only gives this effect to the possession of liquor when the quantity exceeds one gallon in some degree. *State v. Atwood*, 166 N. C. 438, 81 S. E. 318.

It is not necessary to allege in the warrant under this section that the defendant is not a druggist or a medical depository. *State v. Atwood*, 166 N. C. 438, 81 S. E. 318.

*Prima facie* or presumptive evidence does not, of itself, establish the fact, or facts, upon which the verdict or judgment must rest, nor does it shift the burden of the issue, which always remains with him who holds the affirmative. It is no more than sufficient evidence to establish the vital facts without other proof, if it satisfied the jury. *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

An erroneous instruction which placed upon him the burden of showing that he did not have the spirituous liquor for an unlawful purpose, is not cured by also placing the burden upon the State to show that he was guilty of the offence charged beyond a reasonable doubt. *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

Though the State may show the fact constituting a *prima facie* case, yet it is reversible error for the court to instruct the jury that these facts cast the burden upon the defendant to show his innocence by the preponderance of the evidence. *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

This section is not an assumption by the Legislature of judicial power, or an invasion by it of the province assigned to another and co-ordinate branch or department of the Government. *S. v. Russell*, 164 N. C. 482, 80 S. E. 66.

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For an extended discussion of the effect of *prima facie*, or presumptive evidence and of the power of the Legislature in respect to fixing or modifying rules of evidence, see *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

8. This subsection does not repeal Chapters 819 and 992, Laws 1907, making the possession by one person of more than 2½ gallons of spirituous liquor in Mecklenburg County *prima facie* evidence of an unlawful intent to sell. *S. v. Russell*, 164 N. C. 482, 80 S. E. 66.

2081.

Amended, see Supplement 1913.

2081a.

For notes on this section see Supplement 1913.

2083.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

2088.

For notes on this section see Supplement 1913.

2089.

Amended, see Supplement 1913.

2090.

It is the duty of the register to make the inquiry as to the age of the woman, not as a mere matter of form, but for the purpose, conscientiously, of ascertaining the fact; such inquiry as a business man, acting in the important affairs of life, would make. *Savage v. Moore*, 167 N. C. 383, 83 S. E. 549.

For additional notes on this section see Supplement 1913.

2093.

For notes on this section see Supplement 1913.

2093a.

This section does not confer upon the mother the right to sue for damages for the mutilation of the body of her dead son, while the father is living. *Floyd v. R. R.*, 167 N. C. 55, 83 S. E. 12.

2094.

Amended, see Supplement 1913.

This act completely emancipates the *feme covert*. Now she may deal and contract without her husband's consent as freely as if she were unmarried, except in dealing with her husband, under Revisal, Section 2107, and in conveyance of her real estate. *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820.

Now the wife may purchase not only necessities, but other articles in her own name and on her own credit, and the creditor may recover of her for them without making the husband party defendant. *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820.

In an action against a married woman under this section, the husband is not a necessary or even a proper party. *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820.

For additional notes on this section see Supplement 1913.



2097.

For notes on this section see Supplement 1913.

2098.

Cited in the dissenting opinion of Clark, C. J., in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

2101.

For notes on this section see Supplement 1913.

2102.

Cited but not construed in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

2103.

In an action against a married woman under this section, the husband is not a necessary or even a proper party. *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820.

2105.

For notes on this section see Supplement 1913.

2107.

A conveyance of land by the wife to her husband without her privy examination and the certificate of the probate officer that the contract "is not unreasonable or injurious to her" is color of title. *Norwood v. Totten*, 166 N. C. 648, 82 S. E. 951.

Cited but not construed in *Lipinsky v. Revell*, 167 N. C. 508, 83 S. E. 820.  
For additional notes on this section see Supplement 1913.

2108.

This section clearly refers throughout to contracts between the husband and wife, and does not, and was not intended, to affect the contracts between the husband and wife and third parties. *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

For additional notes on this section see Supplement 1913.

2109.

Cited but not construed in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

When a husband and wife who have an estate by entireties in lands, are divorced, they become tenants in common of the land. *McKinnon v. Caulk*, 167 N. C. 411, 83 S. E. 559.

2110.

Cited but not construed in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6;  
in dissenting opinion in *Cooke v. Cooke*, 164 N. C. at 284, 80 S. E. 178.

See notes to Section 2109.

2111.

Cited but not construed in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

Cited but not construed in dissenting opinion in *Cooke v. Cooke*, 164 N. C. at 284, 80 S. E. 178.

For additional notes on this section see Supplement 1913.

2113.

For notes on this section see Supplement 1913.

**2116.**

Cited in the dissenting opinion of Clark, C. J., in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6, and in dissenting opinion in *Cooke v. Cooke*, 164 N. C. at 284, 80 S. E. 178.

For additional notes on this section see Supplement 1913.

**2117.**

For a recital of evidence held sufficient to support a verdict that the wife had been abandoned, within the meaning of this section, see *Bachelor v. Norris*, 166 N. C. 506, 82 S. E. 839.

This section is constitutional. *Bachelor v. Norris*, 166 N. C. 506, 82 S. E. 839.

Cited in the dissenting opinion of Clark, C. J., in *Jackson v. Beard*, 162 N. C. 105, 78 S. E. 6.

**2118.**

For notes on this section see Supplement 1913.

**2123.**

For notes on this section see Supplement 1913.

**2151.**

A promissory note given for the purchase price of timber conveyed by deed, which contains a condition that it is "subject to the provisions of said deed," is conditional in form and dependent in its provisions upon an outside paper referred to therein, and is non-negotiable under the second requirement herein. There is nothing in Sections 2153 or 2154 which cures this defect or makes the note negotiable. *Pope v. Lumber Co.*, 162 N. C. 206, 78 S. E. 65.

For additional notes on this section see Supplement 1913.

**2152.**

For notes on this section see Supplement 1913.

**2153.**

See notes to Section 2151.

For additional notes on this section see Supplement 1913.

**2154.**

See notes to Section 2151.

For additional notes on this section see Supplement 1913.

**2155.**

For notes on this section see Supplement 1913.

**2156.**

For notes on this section see Supplement 1913.

**2157.**

For notes on this section see Supplement 1913.

**2158.**

For notes on this section see Supplement 1913.

**2159.**

For notes on this section see Supplement 1913.



- 2164.** For notes on this section see Supplement 1913.
- 2166.** For notes on this section see Supplement 1913.
- 2167.** For notes on this section see Supplement 1913.
- 2168.** For notes on this section see Supplement 1913.
- 2169.** For notes on this section see Supplement 1913.
- 2171.** For notes on this section see Supplement 1913.
- 2172.** Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.  
For additional notes on this section see Supplement 1913.
- 2173.** A pre-existing debt from one bank to another constitutes value for the transfer of a negotiable note. *Bank v. Seagroves*, 166 N. C. 608, 82 S. E. 947.  
Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.  
For circumstances held to constitute a purchaser for value, see *Smathers v. Hotel Co.*, 162 N. C. 346, 78 S. E. 224.  
For additional notes on this section see Supplement 1913.
- 2174.** For notes on this section see Supplement 1913.
- 2175.** For a case of a lien holder as a holder for value, see *Smathers v. Hotel Co.*, 162 N. C. 346, 78 S. E. 224.
- 2176.** The burden of proof to show want of consideration rests upon the maker under this section. *Piner v. Brittain*, 165 N. C. 401, 81 S. E. 462.  
Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 15, 77 S. E. 1006.  
For additional notes on this section see Supplement 1913.
- 2177.** For notes on this section see Supplement 1913.
- 2178.** Where the note is payable to order, endorsement of the payee is necessary to pass the title to third parties, freed of the equities and defences of the makers against the payee, and without such endorsement the holders of the note are only the equitable owners, and subject to these defences. *Bank v. McEachern*, 163 N. C. 333, 79 S. E. 680.  
Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.  
For additional notes on this section see Supplement 1913.

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2179.

For notes on this section see Supplement 1913.

2183.

Between an indorser in blank and remote parties without notice the weight or authority is that parol proof is inadmissible, and the contract implied by law stands absolute. *Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

Parol testimony may be adduced under a blank indorsement to annex a qualification or special contract as between the immediate parties. *Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

2185.

For notes on this section see Supplement 1913.

2187.

For notes on this section see Supplement 1913.

2190.

For notes on this section see Supplement 1913.

2191.

For notes on this section see Supplement 1913.

2195.

For notes on this section see Supplement 1913.

2197.

For notes on this section see Supplement 1913.

2198.

For notes on this section see Supplement 1913.

2199.

For notes on this section see Supplement 1913.

2200.

For notes on this section see Supplement 1913.

2201.

Where the plaintiff sues on a negotiable note, claiming to be a holder in due course, and fraud in its execution is shown, the defendant may prove actual or constructive notice of fraud in rebuttal of the plaintiff's evidence, if he has offered sufficient proof to require it, or he may rely upon the plaintiff's own evidence upon the issue as to whether he knew or should have known of it. *Bank v. Branson*, 165 N. C. 344, 81 S. E. 410.

It was not alone sufficient that plaintiff should have given value; the other facts must appear which are required to constitute a purchaser in due course. The note must have been taken on good faith before it was overdue, and without notice of the fraud. *Bank v. Branson*, 165 N. C. 344, 81 S. E. 410.

A bank taking a draft for collection is not a holder in due course. *Lumber Co. v. Childerhose*, 167 N. C. 34, 83 S. E. 22.

To constitute notice of infirmity in an instrument or defect in the title of the person negotiating same, the person to whom it is negotiated



must have actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounts to bad faith. *Lumber Co. v. Childerhose*, 167 N. C. 34, 83 S. E. 22.

Cited but not construed in *Bank v. Seagroves*, 166 N. C. 608, 82 S. E. 947.

Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.

For additional notes on this section see Supplement 1913.

**2203.**

Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.

For additional notes on this section see Supplement 1913.

**2204.**

Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.

Cited but not construed in *Bank v. Branson*, 165 N. C. 344, 81 S. E. 410.

For additional notes on this section see Supplement 1913.

**2205.**

A charge that if the transferee "had notice of the fraud, or had notice of any facts or circumstances which ought to have put a reasonably prudent man upon inquiry, and if they had made such inquiry they could have discovered the fraud or the facts and circumstances constituting the same, and they failed to make such inquiry and discovery," they were not purchasers without notice, was held reversible error under this section. *Smathers v. Hotel Co.*, 162 N. C. 346, 78 S. E. 224.

Cited but not construed in *Smathers v. Hotel Co.*, 167 N. C. 469, 83 S. E. 844.

Discussed by Clark, C. J., in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.

For additional notes on this section see Supplement 1913.

**2206.**

Discussed by Clark, C. J. in *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.

For additional notes on this section see Supplement 1913.

**2207.**

For notes on this section see Supplement 1913.

**2208.**

It seems that when a bank discounts a note, but, instead of paying the payee the proceeds in cash, simply gives him credit on his bank account, and there is no evidence that the payee was in its debt or that the money or any part of it had ever been checked out, or that the bank, if it fails to recover, is or is likely to be out of pocket by reason of the discount, the bank will not be held to be a holder for value. *Bank v. Walser*, 162 N. C. 53, 77 S. E. 1006.

Under this section the possession of a negotiable instrument by the indorsee, or by a transferee, where indorsement is not necessary, imports *prima facie* that he is the lawful owner and that he acquired it before maturity, for value, in the usual course of business and without notice of any circumstances impeaching its validity. *Trust Co. v. Bank*, 167 N. C. 260, 83 S. E. 474.

## 2209-2213 AMENDMENTS AND NOTES TO REVISAL

An assignment without recourse is not sufficient to charge the assignee with notice of a defence against the note on the part of the maker, nor is it sufficient to put him on inquiry in reference thereto. Though it may be considered as a circumstance to others, to aid in creating a suspicion and put the assignee on inquiry. *Bank v. Branson*, 165 N. C. 344, 81 S. E. 410.

Where the evidence was conflicting as to whether the bank was the holder in due course of the note sued on, it raises an issue for the determination of the jury on the questions presented, and the refusal of the judge to accept such issues tendered was reversible error. *Bank v. Exum*, 163 N. C. 199, 79 S. E. 498.

Fraud must always be pleaded, and in the absence of any averment of fraud or false representation, every holder is deemed *prima facie* to be a holder in due course. *Bank v. Seagroves*, 166 N. C. 608, 82 S. E. 947.

Where fraud in the procurement of note is pleaded as a defense to the payment of a note, with evidence tending to establish it, the burden of proof is on the plaintiff claiming to be a holder in due course, to show that he purchased in good faith and without notice of any infirmity or defect, for value and before maturity. *Trust Co. v. Whitehead*, 165 N. C. 74, 80 S. E. 1065; *Trust Co. v. Ellen*, 163 N. C. 45, 79 S. E. 263; *Bank v. Exum*, 163 N. C. 199, 79 S. E. 498; *Bank v. Branson*, 165 N. C. 344, 81 S. E. 410. And it is insufficient that he acquired the note for value, before maturity. *Bank v. Drug Co.*, 166 N. C. 99, 81 S. E. 993.

Is default in payment, when previously due, of the interest on a negotiable note acquired before maturity, alone evidence of and notice of an infirmity in the instrument? See *Trust Co. v. Whitehead*, 165 N. C. 74, 80 S. E. 1065.

Cited but not construed in *Smathers v. Hotel Co.*, 167 N. C. 469, 83 S. E. 844.

For additional notes on this section see Supplement 1913.

### 2209-2213.

For notes on these sections see Supplement 1913.

### 2215.

For notes on this section see Supplement 1913.

### 2217.

For notes on this section see Supplement 1913.

### 2219-2222.

For notes on these sections see Supplement 1913.

### 2224-2225.

For notes on these sections see Supplement 1913.

### 2230-2232.

For notes on these sections see Supplement 1913.

### 2234.

Amended, see Supplement 1913.

### 2237.

Cited but not construed in *Trust Co. v. Bank*, 166 N. C. 112, 81 S. E. 1074.



**2239-2241.**

For notes on these sections see Supplement 1913.

**2246-2248.**

For notes on these sections see Supplement 1913.

**2253-2255.**

For notes on these sections see Supplement 1913.

**2258-2259.**

For notes on these sections see Supplement 1913.

**2262.**

For notes on this section see Supplement 1913.

**2264.**

For notes on this section see Supplement 1913.

**2269-2275.**

For notes on these sections see Supplement 1913.

**2276.**

Cited but not construed in Trust Co. v. Bank, 166 N. C. 112, 81 S. E. 1074.

For additional notes on this section see Supplement 1913.

**2277.**

Where a bank has refused to pay a check, the holder has no cause of action thereon against the bank, but must seek his remedy against the drawer. Trust Co. v. Bank, 166 N. C. 113, 81 S. E. 1074

For additional notes on this section see Supplement 1913.

**2282.**

For notes on this section see Supplement 1913.

**2284.**

For notes on this section see Supplement 1913.

**2286.**

See notes to Section 2339.

**2287.**

Cited but not construed in Trust Co. v. Bank, 166 N. C. 112, 81 S. E. 1074.

For additional notes on this section see Supplement 1913.

**2293.**

For notes on this section see Supplement 1913.

**2296.**

Amended, see Supplement 1913.

**2302.**

For notes on this section see Supplement 1913.

2334 AMENDMENTS AND NOTES TO REVISAL

2334.

For notes on this section see Supplement 1913.

2335.

A check is a written order on a bank or banker, purporting to be drawn against a deposit of funds, for the payment, at all events, of a sum of money to a certain person therein named, or to him or his order, or to bearer, and payable on demand. Trust Co. v. Bank, 166 N. C. 113, 81 S. E. 1074.

See notes to Section 2339.

For additional notes on this section see Supplement 1913.

2336.

Cited but not construed in Trust Co. v. Bank, 166 N. C. 112, 81 S. E. 1074.

For additional notes on this section see Supplement 1913.

2337-2338.

For notes on these sections see Supplement 1913.

2339.

In this case it was held that there was evidence for the jury tending to show a constructive or implied acceptance of the check or bill by the bank. Trust Co. v. Bank, 166 N. C. 113, 81 S. E. 1074.

*Quære.*—If a bank retains a check more than twenty-four hours after it has been presented for payment, does it thereby impliedly accept it, and become liable, on this acceptance, to the holder of the check, under sections 2286 and 2335? Trust Co. v. Bank, 166 N. C. 113, 81 S. E. 1074.

*Quære.*—Does this section recognize that a check may be the subject of acceptance, just like an ordinary bill of exchange, as well as of certification? Trust Co. v. Bank, 166 N. C. 113, 81 S. E. 1074.

For additional notes on this section see Supplement 1913.

2340-2345.

For notes on these sections see Supplement 1913.

2347a. Women may be appointed notaries public.

The Governor is hereby authorized to appoint women as well as men to be notaries public, and this position shall be deemed a place of trust and profit and not an office. (1915, c. 12. In effect February 1, 1915.)

2354.

The provision in this section as to the manner of swearing is merely a form "adapted to the religious belief of the general mass of citizens for the sake of convenience and uniformity." State v. Pitt, 166 N. C. 268, 80 S. E. 1060.

2360.

Cited but not construed in S. v. Pitt, 166 N. C. 268, 80 S. E. 1060.

2363. Certain oaths validated.

All oaths and affidavits made prior to the first day of March, nineteen hundred and fifteen, administered by authorized officers to persons with uplifted hands be and the same are hereby validated and made as legal



and binding as if administered to persons laying hands on and kissing the Holy Evangelists of Almighty God, whether said oaths and affidavits were made by persons conscientiously scrupulous of taking a "book oath" or not, and whether such oaths and affidavits were made in other respects in strict compliance with section two thousand three hundred and fifty-four: *Provided*, that this section shall not affect the rights of the parties in actions now pending nor in any manner affect prosecutions for perjury claimed to have been heretofore committed. (1915, c. 3.)

Cited but not construed in *S. v. Pitt*, 166 N. C. 268, 80 S. E. 1060.

**2365.**

For notes on this section see Supplement 1913.

**2368.**

This section can only apply, in any event, to persons who, having duly qualified, are filling the duties of the office under color of right; and when an officer's commission has expired, he must be held, from that time, without color. *Salisbury v. Croom*, 167 N. C. 223, 83 S. E. 354.

**2377-2378.**

For notes on these sections see Supplement 1913.

**2383. Close season, exception.**

If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster-beds of this state between the fifteenth day of April and the fifteenth day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: *Provided*, that oysters may be taken with hand-tongs from March fifteenth to May first and with dredges from March fifteenth to April fifth, in any year, to be used for planting on private grounds entered and held under the laws of this state, upon the condition further that they shall not be removed from said private grounds within a period of three months from time of planting: *Provided, further*, that oysters may be taken with hand-tongs only for home consumption: *Provided, further*, that coon oysters may be taken from September first to May first of each year upon the condition that no instrument or implement shall be used in the taking of said coon oysters before November first and after April first. (1907, c. 969, s. 4; 1909, c. 426; 1913, c. 85; 1915, c. 120.)

**2395. Dealing in oysters without license.**

If any person shall engage in the business of buying, canning, packing, shipping or shucking oysters taken or caught from the public grounds, or natural oyster beds of the state, without having first obtained a license as required by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1915, c. 136.)

**2396. Dealer failing to keep record.**

If any person engaged in buying, packing, canning, shucking or shipping oysters taken or caught from the public grounds or natural oyster beds of the state shall fail to keep a permanent record of all oysters bought by him or caught by him, or by persons for him, when and from whom bought, the number of bushels and the price paid therefor, or shall fail upon demand to exhibit such record as required by law, or shall fail to verify the same, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1915, c. 136.)

**2402b. Oysters in Stump Sound in Onslow County.**

1. It shall be unlawful for any person, firm or corporation to catch, take or carry away from the oyster beds in the waters of Stump Sound, in Onslow County, between Alligator Bay and the Pender County line any oysters except for home consumption between the first day of March and the twenty-fifth day of October in any year.

2. Any person, firm or corporation violating any provision in section one of this act shall, upon conviction, be fined not less than fifty dollars or imprisoned not less than thirty days in the discretion of the court. (1915, c. 130. In effect March 8, 1915.)

**2402c. Oysters in Brunswick County.**

1. It will be unlawful for any person or persons to build a fire upon any natural oyster bed or rock at a place where oysters are in a state of growth. That it shall be unlawful for any person or persons to rake with clam rake any oyster bed or oyster rock.

2. Any person violating the provisions of this act shall be guilty of a misdemeanor, and shall be fined not exceeding fifty (\$50) dollars, or imprisoned not exceeding thirty days.

3. This act shall apply to the County of Brunswick. (1915, c. 138.)

**2403.**

Amended, see Supplement 1913.

**2404.**

Amended, see Supplement 1913.

**2405.**

Repealed, see Supplement 1913.

**2406.**

Amended, see Supplement 1913.

**2411. License to oyster dealers.**

The oyster commissioner, assistant oyster commissioner or inspector shall, upon application and the payment of a fee of fifty cents, grant to the applicant a dealer's license, authorizing the applicant to engage



in the business of buying, purchasing, canning, packing, shucking or shipping oysters. Such license shall not be issued prior to the fifteenth day of November of any year and shall expire on the fifteenth day of March following. The assistant oyster commissioner or inspector granting the license shall at once mail a duplicate to the oyster commissioner. Nothing contained in this section shall be deemed to require any license of persons engaged in the business of buying, purchasing, canning, packing, shucking or shipping oysters which were not taken or caught from the public grounds or natural oyster beds of the state. (1907, c. 969, s. 7; 1915, c. 136.)

**2415.**

Amended, see Supplement 1913.

**2417.**

For notes on this section see Supplement 1913.

**2419.**

Amended, see Supplement 1913.

**2419a.**

Amended, see Supplement 1913.

**2429.**

Amended, see Supplement 1913.

**2430.**

For notes on this section see Supplement 1913.

**2434a. In Carteret County; pound nets; close season.**

1. It shall be lawful to fish pound nets from January first to May fifteenth of each year within the waters of that portion of Carteret county, with a line beginning at the northwest point of outward Swan island, running a due north course; from such line running up the Neuse river to the spar buoy at the entrance of Adams creek: *Provided*, that not more than five nets shall be set in any one stand: *Provided, further*, that not more than one-fourth of the river in width shall be used for the purpose of fishing under this act.

2. Any person, firm, corporation, or syndicate fishing with pound nets in the waters of Carteret county at any other time except as prescribed in section one of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars or imprisoned not less than six months, in the discretion of the court. It is expressly enacted that every day such fishing is done in violation of this act shall constitute a separate offense. (1911, c. 128; 1915, c. 180.)

**2434c. Fishing with seines or nets in certain parts of the ocean in New Hanover County.**

1. It shall be unlawful for any person, firm or corporation to fish

with seines, purse, pod or pound nets, or with any kind of nets, except cast nets, in the waters of the Atlantic Ocean in New Hanover County within the following limits:

Beginning at a point on the beach on the north side of the mouth of Moore's Inlet and extending southwardly along the strand of the Atlantic Ocean to a point on the north of the mouth of Masonboro Inlet, and extending one mile out from the shore line.

2. The above shall not apply to the use of set nets between the first day of November and the first day of May next following.

3. Any person violating this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars and imprisoned not more than sixty days. (1915, c. 104. In effect March 5, 1915.)

**2434d. Fishing in Cedar Island township, Carteret County.**

1. It shall be unlawful for any person or persons, firm or corporation to pull any haul-net within the waters of Cedar Island Township, Carteret County, with steam, gasoline or any other motor power.

2. Any person or persons, firm or corporation violating the provisions of section one of this act shall be guilty of a misdemeanor, and be fined or imprisoned, or both, in the discretion of the court. (1915, c. 281. In effect March 8, 1915.)

**2437b. Stop-net fishing in certain waters in Onslow County.**

1. It shall be unlawful for any person, firm or corporation to set, place, fix, establish or operate any stop net that will prevent or interrupt the passage of any fish in the water of any creek or sound in Onslow County, North Carolina, between New River and the Carteret County line in said county.

2. Any person, firm or corporation violating the provisions of this act shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1915, c. 133. In effect March 8, 1915.)

**2437c. Fish in Onslow County.**

1. It shall be unlawful for any person, firm or corporation to set any net or seine on the coast of Onslow County for a longer time than one hour at any one time.

2. Any person violating the provisions in section one of this act shall upon conviction, be fined not less than one hundred dollars or imprisoned not less than three months.

3. One-half of said fine shall go to the party or parties reporting such offenses, and furnishing sufficient evidence to convict.

4. In the event any offender shall be unable to pay fine, that his boats, nets and other fishing paraphernalia shall be forfeited and sold to the highest bidder for cash at courthouse door after twenty days



notice, and proceeds of said sale be applied to cost and fine and any surplus paid to the defendant.

5. *Provided, however*, this act shall not tend to convict any party who shall catch more than can be taken up in one hour. (1915, c. 184. In effect March 9, 1915.)

**2438b. Fishing in the Albemarle Sound next to the Tyrrell County shore.**

1. It shall be unlawful for any person, firm or corporation to set or use for catching fish any anchor gill net within fourteen hundred yards of any stake gill net of from four and one-half inch to five and one-half inch mesh, in that part of the Albemarle Sound embraced in the following area: Commencing on the east shore of the Scuppernong river where said river empties into the Albemarle Sound, thence north to the middle of the Albemarle Sound, thence along the middle of the Albemarle Sound to a point in the Sound opposite Newberry Pier, thence to the shore at Newberry Pier, and along the Sound shore to the beginning.

2. Any person, firm or corporation violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned for not more than thirty days. (1915, c. 112. In effect March 5, 1915.)

**2439.**

Amended, see Supplement 1913.

**2440.**

Amended, see Supplement 1913.

**2440a.**

Amended, see Supplement 1913.

**2442.**

Amended, see Supplement 1913.

**2451.**

Amended, see Supplement 1913.

**2455b. Fishing in Hyde County.**

1. It shall be unlawful for any person or persons to set or use any pound or Dutch net south of the dividing line between Dare and Hyde Counties on the west side of Pamlico Sound along the shores of Hyde County, more than two thousand yards from a line drawn from point to point along said shore.

2. Any person violating section one of this act shall be deemed guilty of a misdemeanor and upon conviction shall remove said nets at once: *Provided*, that any person failing to remove said nets after conviction shall be subject to a fine of not less than ten nor more than fifty dollars. (1915, c. 59. In effect March 1, 1915.)

2457.

For notes on this section see Supplement 1913.

2461.

Amended, see Supplement 1913.

2462.

Amended, see Supplement 1913.

2466.

For notes on this section see Supplement 1913.

2482.

Amended, see Supplement 1913.

2484.

Repealed, see Supplement 1913.

2484a.

For new regulations concerning fisheries, see Section 2484t.

2484g.

Amended, see Supplement 1913.

2484l.

Amended, see Supplement 1913.

2484n.

Amended, see Supplement 1913.

2484p. License tax.

(Amended by inserting the word "Tyrrell" in the last line of the section after the word "Pamlico." 1915, c. 30.)

Amended, see Supplement 1913.

**2484t(1). Fisheries Commission established; appointment, etc., of fish commissioner and assistants.**

For the purpose of enforcing the laws relating to all commercial fish there is hereby created a fisheries commission, which shall consist of five members appointed by the Governor, at least three of whom shall be from the several fishing districts of the State, who shall be denominated the "Fisheries Commission Board." The members shall be appointed as follows, viz.: two, whose terms of office shall expire on the first day of June, one thousand nine hundred and seventeen, and three, one of which shall be a member of the minority party, whose terms of office shall expire on the first day of June, one thousand nine hundred and nineteen; and their successors shall be appointed by the Governor for a term of four years each thereafter. The five members shall receive four dollars per day each and traveling expenses while attending meetings of the board: *Provided*, that the per diem and expenses shall not exceed two hundred and fifty dollars each per annum.

Said board shall appoint a fish commissioner within thirty days



after the passage of this act, and the said commissioner shall be responsible to the fisheries commission board for carrying out the duties of his office, and shall make semi-annual reports to them at such time as they may require. The term of office of said commissioner and his successors in office shall be four years, or until their successors are appointed and qualified, and in case of vacancy in the office the appointment shall be to fill the vacancy. The said commissioner shall appoint two assistant commissioners, by and with the consent of the fisheries commission board, one of whom shall be designated as assistant fish commissioner and the other as shellfish commissioner. The aforesaid commissioner and assistant commissioners shall receive such pay as the fisheries commission board shall determine. During the absence of the commissioner, or his inability to act, the fisheries commission board shall appoint one of the assistant commissioners to have and exercise all the powers of the commissioner. The commissioner and assistant commissioners shall each execute and file with the Secretary of State a bond, payable to the State of North Carolina, in the sum of five thousand dollars for the commissioner and twenty-five hundred dollars for each of the assistant commissioners, with sureties to be approved by the Secretary of State, conditioned for the faithful performance of their duties and to account for and pay over pursuant to law all moneys received by them in their office. The fisheries commissioner and assistant commissioners shall take and subscribe an oath to support the constitution and for the faithful performance of the duties of his office, which oaths shall be filed with their bonds. The assistant commissioners may be removed for cause by the commissioner, who may appoint their successors.

## **(2). Inspectors.**

The fisheries commissioner may appoint, with the approval of the fisheries commission board, inspectors in each county having fisheries under his jurisdiction, who will assist him at such times as he may require. The said inspector shall serve under the direction of the commissioner receiving compensation not to exceed three dollars per day and necessary expenses while in actual service.

## **(3). Office and clerical force.**

The fisheries commissioner shall rent and equip an office, which will be adequate for the business of the commission, in some town conveniently located to the maritime fisheries, and he is authorized to employ such clerks and other employees as may be necessary for the proper carrying on of the work of his office, by and with the consent of the fisheries commission board.

## **(4). Equipment.**

The fisheries commissioner is authorized, by and with the consent

of the fisheries commission board, to purchase or rent such boats, nets, and other equipment as may be necessary to enable him and his assistants to fulfill the duties specified in this act.

**(5). Duties.**

The commissioner shall enforce all acts relating to the fish and fisheries of North Carolina; he shall, by and with the advice and consent of the fisheries commission board, make such regulations as shall maintain open for the passage of fishes all inlets and not less than one-third of the width of all sounds and streams, or such greater proportions of their width as may be necessary; he shall collect and compile statistics showing the annual product of the fisheries of the State, the capital invested and the apparatus employed, and any fisherman refusing to give these statistics shall be refused license for the next year; and the fish commissioner shall prepare and have on file in his office maps based on the charts of the United States coast and geodetic survey, of the largest scale published, showing as closely as may be the location of all fixed apparatus employed during each fishing season; he shall have surveyed and marked in a prominent manner those areas of waters of the State in which the use of any or all fishing appliances are prohibited by law or regulation, and those areas of waters in the State in which oyster tonging or dredging is prohibited by law; he shall prosecute all violations of the fish laws, and whenever necessary he may employ counsel for this purpose; wherever he shall find nets or other appliances being fished or used in violation of the fisheries laws of the State he shall remove same pending trial; he shall, in an official capacity, have power to administer oaths and to send for and examine persons and papers; he shall be responsible for the collection of all license taxes, fees, rentals, or other imposts on the fisheries, and shall pay same into the State treasury to the credit of the fisheries commission fund; he shall on or before the twenty-fifth day of each month, mail to the treasurer of the State a consolidated statement showing the amount of taxes and license fees collected during the preceding month, and by and from whom collected; he shall carry on investigations relating to the migration and habits of the fish in the waters of the State, also investigations relating to the cultivation of the oyster, clam and other mollusca, and of the terrapin and crab, and for this purpose he may employ such scientific assistance as may be authorized by the fisheries commission board.

**(6). Arrests without warrant; when and how made.**

The fisheries commissioner, assistant commissioners and inspectors shall have power, with or without warrants, to arrest any person or persons violating any of the fishery laws, who shall be carried before a magistrate for trial according to section three thousand one hundred and eighty-two of the Revisal of one thousand nine hundred and five.



**(7). Power to take fish.**

The fisheries commissioner and the United States bureau of fisheries may take and cause to be taken for scientific purposes or for fish culture any fish or other marine organism at any time from the waters of North Carolina, any law to the contrary notwithstanding; and may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for purposes of scientific investigations or fish culture: Provided, that in taking fish for fish culture in the hatcheries of this State the fish shall only be taken while the hatcheries are in operation and only between the hours of four and eleven p. m.

**(8). No interest in fisheries.**

The members of the fisheries commission board, the fisheries commissioner, assistant commissioners, and inspectors shall not be financially interested in any fishing industry in North Carolina.

**(9). Revenue.**

All license fees, taxes, rentals of bottoms for oyster or clam cultivation and other imposts upon the fisheries, in whatever manner collected, shall, except as otherwise provided in this act, be deposited with the State Treasurer to the credit of the fisheries commission fund, to be drawn upon as directed by the fisheries commission board.

**(10). License to fish and to catch oysters.**

Each and every person, firm, or corporation, before commencing or engaging in any kind of fishing in the State, shall file with an inspector of the county in which he desires to fish, or with the fisheries commissioner or any of his assistant commissioners, a sworn statement as to the number and kind of nets, seines, or other apparatus intended to be used in fishing. Upon filing this sworn statement on oath the fisheries commissioner shall issue or cause to be issued to the said party or parties, a license as prescribed by law; said applicant shall pay a license fee equal in amount to the fee or tax prescribed by law for fishing different kinds of apparatus in the waters of the State of North Carolina, or for tonging or dredging for oysters, as the case may be. The fisheries commissioner shall keep in a book especially prepared for the purpose an exact record of all licenses, to whom issued, the number and kinds of nets, boats, and other apparatus licensed, and the license fees received. He shall furnish to each person, firm, or corporation in whose favor a license is issued a special tag which will show the license number and number of pound nets, or yards of seine, or yards of gill net that the licensee is authorized to use, and the licensee shall attach said tag to the net in a conspicuous manner satisfactory to the fisheries commissioner. All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the jib, above the reef and bonnet and on the opposite side of mainsail, above all reef

points, in black letters, not less than twenty inches long, the initial letter of the county granting the license and the number of said license, the number to be painted on canvas and furnished by the fisheries commissioner, for which he shall receive the sum of fifty cents. Any boat or vessel used in catching oysters without having complied with the provisions of this section may be seized, forfeited, advertised for twenty days at the courthouse and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds, less the cost of the proceedings, shall be paid into the school fund. The licenses to fish with nets shall all terminate on December thirty-first. Any person who shall willfully use for commercial fishing purposes any kind of net whatever, without having first complied with the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined twenty-five dollars for each and every offense.

**(11). License for boat used in catching oysters.**

The fisheries commissioner, or shellfish commissioner, or inspector, may grant license for a boat to be used in catching oysters upon application made, according to law, and the payment of a license tax as follows: On any boat or vessel without cabin or deck, and under custom house tonnage, using scrapes or dredges, dredges, measuring over all twenty-five feet and under thirty, a tax of three dollars; fifteen feet and under twenty-five feet, a tax of two dollars; on any boat or vessel with cabin or deck, and under custom house tonnage, using scrape or dredges, measuring over all thirty feet or under, a tax of five dollars; over thirty feet a tax of six dollars; on any boat or vessel using scoops, scrapes, or dredges required to be registered or enrolled in the custom house, a tax of one dollar and fifty cents a ton on gross tonnage. No vessel propelled by steam, gas or electricity, and no boat or vessel not the property absolutely of a citizen or citizens of this State, shall receive license or be permitted in any manner to engage in the catching of oysters anywhere in the waters of this State.

**(12). Fishing for menhaden with purse nets.**

Whenever any person or persons, corporation or corporations, may intend to take menhaden (fat-backs), porgies, herring or other fish in any waters within the jurisdiction of this State, including the waters of the Atlantic Ocean within three nautical miles of the coasts of said State, either on his own account and benefit or on account and benefit of his employer, with purse or shirred nets, such person or persons, corporation or corporations, shall make an application to the fisheries commissioner for a license, and, upon the receipt of such application, the fisheries commissioner shall, upon the receipt of a sum equal to two dollars for each ton of the net tonnage up to seventy-five tons, and one dollar per ton in excess thereof of each vessel employed in such



fishing, said net tonnage to be determined by custom house measurement, as a license fee, issue to such person or persons, corporation or corporations, a license duly signed by the fisheries commissioner, which said license shall be valid and in force for the term of one year; all such licenses to be dated from January first, and no license shall be for a space of time less than one year. For every violation of this act the offending person or persons, corporation or corporations, shall be guilty of a misdemeanor and be fined two hundred dollars for each and every offense.

**(13). Purchase tax.**

All dealers in oysters and all persons who purchase oysters for canning, packing, shucking or shipping, shall pay a tax of two cents on every bushel of oysters purchased by them, or caught by them, or by any one of them: *Provided*, that no oyster shall be twice taxed, and *Provided, further*, that no tax shall be imposed on oysters taken from private oyster gardens. This tax shall be paid to and collected by the inspectors, and, when paid, a receipt shall be given therefor. Upon failure or refusal by any person, firm or corporation to pay said tax, his license as a dealer shall at once become null and void, and no further license shall be granted him during the current year; and it shall be the duty of the commissioner, assistant commissioner, or inspector, to institute suit for the collection of said tax. Such suit shall be in the name of the State of North Carolina on relation of the commissioner or of the inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and to the use of the general fisheries commission fund.

**(14). License tax.**

The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina:

Anchor gill nets, twenty cents per one hundred yards or fraction thereof.

Stake gill nets, ten cents per one hundred yards or fraction thereof.

Drift gill nets, twenty cents per one hundred yards or fraction thereof.

Pound nets, one dollar each.

Seine, drag nets, and mullet nets under one hundred yards, one dollar each.

Seine, drag nets, and mullet nets over one hundred yards and under three hundred yards, one dollar per one hundred yards or fraction thereof.

Seine, drag nets, and mullet nets over three hundred yards and under one thousand yards, one dollar and twenty-five cents per one hundred yards or fraction thereof.

Seine, drag nets, and mullet nets over one thousand yards, one dollar and seventy-five cents per one hundred yards or fraction thereof.

Fyke nets, twenty-five cents each.

Tonging for oysters, the license tax shall be one dollar for each tonger.

**(15). Reports.**

The fisheries commission board shall cause to be prepared and submitted to each Legislature a report showing the operations, collections and expenditures of the fisheries commission; and it shall also cause to be prepared for publication such other reports, with necessary illustrations and maps, as will adequately set forth the results of the work and the investigations of the fisheries commission, all such reports, illustrations, and maps to be printed and distributed at the expense of the State, as are other public documents, as the fisheries commission board may direct.

**(16). Appropriation.**

There is hereby appropriated out of the general treasury as a supplementary fund the sum of ten thousand dollars annually for two years, or as much thereof as may be needed, to the fisheries commission to carry out the work of the commission in the protection and promotion of the fisheries of the State, this sum to be repaid to the general treasury by the fisheries commission when it shall be on a self-sustaining basis, said sum to be used and expended as directed by the fisheries commission board, and any part of it that may be required may be used for purchasing boats and other equipment necessary to carry out the work of the commission; and any money that may be in the State treasury to the credit of the fish commission and oyster commission fund on the day that this act becomes effective shall be transferred by the State treasurer to the credit of the fisheries commission fund, and the fisheries commission board is hereby authorized to pay out of the fisheries commission fund all just claims that may be outstanding against the fish or oyster commissions.

**(17). Transfer of equipment.**

All boats, fishing and oyster tackle, office supplies, stationery, and all other supplies of whatever character belonging to the fish commission and oyster commission shall be transferred to the fisheries commissioner for the use of the fisheries commission.

**(18). Jurisdiction of State.**

The State of North Carolina shall have exclusive jurisdiction and control over all the commercial fisheries of the State wherever located.

**(19). Use of explosives or drugs prohibited.**

It shall be unlawful to place in any of the waters of this State any dynamite, giant or electric powder, or any explosive substance whatever, or any drug or poisoned bait, for the purpose of taking,



killing, or injuring fish. And any one violating this section shall, upon conviction, be fined not less than one hundred dollars and imprisoned not less than thirty days.

**(20). Discharging poisonous substances into waters.**

It shall be unlawful to discharge or to cause or permit to be discharged into the waters of the State any deleterious or poisonous substance or substances inimical to the fishes inhabiting the said waters; and any person, persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned in the discretion of the court: *Provided*, this section shall not apply to corporations chartered either by general law or special act before the ratification of this act.

**(21). Regulation of fishing industry by the commission.**

The fisheries commission board is hereby authorized to regulate, prohibit or restrict, in time, place, character and dimensions, the use of nets, appliances, apparatus or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the State; and such regulations, prohibitions, restrictions and prescriptions, after due publication, shall be of equal force and effect with the provisions of this act; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court: *Provided, however*, that if a petition signed by five or more voters of the district or community which will be affected by the proposed change is filed with the fisheries commission board through the fisheries commissioner, assistant commissioners, or inspectors, asking that they have a hearing before any proposed change in the territory, size of mesh, length of net or time of fishing shall go into effect, petitioning that they be heard regarding said change, the fisheries commission board shall in that event designate by advertisement for a period of thirty days at the courthouse and three other public places in the county affected, and also by publication in a newspaper of the county, if such is published in said county, for two consecutive weeks, a place at which said board will meet and hear argument for and against said change, and may ratify, rescind, or alter this previous order of change as may seem just in the premises; and, *Provided, further*, that in making regulations the fisheries commission board shall give due weight and consideration to all factors which will affect the value of the present investment in the fisheries, and that no changes in the existing laws which, if they should go into effect immediately would tend to cause fishermen to lose their property, shall go into effect until twelve months

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from the date that the change has been made by the fisheries commission board.

### **(22). Removal, etc., of posts, buoys, or marks.**

Any person or persons removing, injuring, defacing, or in any way disturbing the posts, buoys, or any other appliances used by the fisheries commission in marking the restricted areas relating to any and all fishing, or marking other areas in which oyster tonging or dredging is prohibited by law, and those marking oyster bottoms that are leased for oyster cultivation, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned at the discretion of the court; and any person anchoring or mooring a boat to any of these buoys or posts shall, upon conviction, be fined not less than twenty-five or more than one hundred dollars, and imprisoned thirty days in jail at the discretion of the court.

### **(23). Edible fish protected.**

Any person, firm or corporation who shall catch or cause to be caught any edible fish in the waters of the State of North Carolina for any other purpose than as food, and any person, firm or corporation who shall use any edible fish for fertilizing purposes shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days.

### **(24). Definition of terms.**

Wherever the word "fish" or "fishes," used as a substantive, occurs in this act, it shall be construed to include porpoises and other marine mammals, fishes, mollusca and crustaceans, and wherever the word "fishing" or "fisheries" occurs it shall be construed to include all operations involved in using, setting or operating apparatus employed in killing or taking the said animals or in transporting and preparing them for market.

### **(25). Certain acts amended.**

All acts relating to the commercial fisheries of North Carolina are hereby amended so that the words "Shellfish Commissioner," "Oyster Commissioner," or "Fish Commissioner," shall read "Fisheries Commissioner," and the words "Shellfish" read "Fisheries Commission." (1915, c. 84. In effect March 4, 1915.)

Head notes to last seven sections by the Editor.

## **2485.**

For procedure when proceedings for partition are removed to the Federal Court and plea of sole seisin is entered, see *Gilbert v. Hopkins*, (C. C. A.), 204 Fed. 196.

Cited but not construed in *Haddock v. Stocks*, 167 N. C. 70, 83 S. E. 9.

For additional notes on this section see Supplement 1913.



**2487.**

Where sole seisin is pleaded in proceedings for partition and the cause is transferred for trial to the Supreme Court, it becomes, in effect, an action of ejectment. *Ditmore v. Rexford*, 165 N. C. 620, 81 S. E. 994.

In partition proceedings a non-suit cannot be taken and the proceeding dismissed except by consent of all parties before the court, and a non-suit permitted by the clerk after the proceedings have become adversary, is a nullity. *Haddock v. Stocks*, 167 N. C. 70, 83 S. E. 9.

Where the plea of sole seisin is not set up the parties are taken to be tenants in common and the only inquiry is as to the interest owned. *Haddock v. Stocks*, 167 N. C. 70, 83 S. E. 9.

Where a referee has found that actual partition cannot be made of lands, an exception thereto by one of the parties does not involve an issue of title and is to be passed on by the clerk, and by the judge of the Superior Court on appeal, and the judges ruling that the matter was one for the jury is held reversible error. *Vanderbilt v. Roberts*, 162 N. C. 272, 78 S. E. 156.

When tenants in common have partition they are entitled to have lands on which they have made improvements assigned to them without credit for the improvements placed thereon. *Daniel v. Dixon*, 163 N. C. 137, 79 S. E. 425.

One who has been made a party to proceedings to sell lands for the purpose of dividing the proceedings among tenants in common and who claims an undivided interest in the lands, which is denied, has the burden of proof upon the issue of his alleged ownership. *McKeel v. Holloman*, 163 N. C. 132, 79 S. E. 445.

For a statement of several principles in regard to compulsory partition at common law that seem to be well settled, see the opinion of Allen, J. (concurring), in *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430.

For additional notes on this section see Supplement 1913.

**2489.**

*Query.*—Is an allotment of an undivided interest in land void if the interest is worth more than \$1,000.00, the maximum value of a homestead exemption? See *Kelly v. McLeod*, 165 N. C. 382, 81 S. E. 455.

**2490.**

For notes on this section see Supplement 1913.

**2494.**

In this case the clerk set aside a judgment in plaintiff's favor on defendant's motion made before him seventeen months thereafter upon allegation of fraud in its procurement, and it was held that he was fully authorized to do so by this section. *Turney v. Davis*, 163 N. C. 38, 79 S. E. 257.

For additional notes on this section see Supplement 1913.

**2495.**

Amended, see Supplement 1913.

Where the title to lands is not put in controversy, in partitioning lands among tenants in common, the effect of the proceeding is to designate the shares of the tenants in common, allotted in severalty to each, and does not have the effect of creating any title that the tenants had not formerly held. *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430.

A judgment in partition proceedings does not estop a grantee of one of the parties, who has purchased the lands allotted in severalty to his grantor, to deny title of another party to a different part of the lands divided in the partition proceedings from that acquired from the grantor. *Carter v. White*, 134 N. C. 466, distinguished. *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430.

For additional notes on this section see Supplement 1913.

**2506.**

For rule as to assessment of betterments in a sale for partition, see *Daniel v. Dixon*, 163 N. C. 137, 79 S. E. 425.

**2508.**

For notes on this section see Supplement 1913.

**2512.**

The Superior Court, being a court of general jurisdiction in law and equity, has the power to order and confirm a private as well as a public sale, though infants be interested therein. *Thompson v. Rospigliosi*, 162 N. C. 145, 77 S. E. 113.

See notes to Section 2513.

For additional notes on this section see Supplement 1913.

**2513.**

This section relates to public sales and does not purport to interfere with the power of a court of equity to order and approve a private one; it is therefore not required that the court wait twenty days before the confirmation of such a sale. *Thompson v. Rospigliosi*, 162 N. C. 145, 77 S. E. 113.

For a case in which the court refused to order a resale upon an upset bid, see *Thompson v. Rospigliosi*, 162 N. C. 145, 77 S. E. 113.

See notes to Section 2512.

For additional notes on this section see Supplement 1913.

**2514.**

Cited in the dissenting opinion of Clark, C. J., in *Thompson v. Rospigliosi*, 162 N. C. 145, 77 S. E. 113.

For additional notes on this section see Supplement 1913.

**2516.**

For notes on this section see Supplement 1913.

**2517.**

This section is in recognition of the principle that it is not necessary to have a division of the land before the allotment of dower. *Lidley v. Tyson*, 167 N. C. 67, 82 S. E. 1025.

For additional notes on this section see Supplement 1913.

**2541a. To indemnify the estate of deceased partners.**

1. Upon the death of any member of a partnership, the surviving partner or partners shall within thirty days execute before the clerk of the superior court of the county where said partnership business was conducted, a bond payable to State of North Carolina, with sufficient surety conditioned upon the faithful performance of his or their duties in the settlement of said partnership affairs.



2. The amount of said bond shall be fixed by the clerk of said court.

3. The settlement of said estate and the liability of said bond shall be the same as under the law governing administrators and their bonds.

4. Upon the failure of said surviving partner or partners to execute the bond provided for in this act, then upon application to said clerk by any person interested in the estate of the deceased partners, said clerk shall appoint a collector of said partnership, who shall be governed by the same law governing an administrator of a deceased person.

5. This act shall in no way apply to partnerships already dissolved. (1915, c. 227. In effect March 9, 1915.)

**2545.**

Amended, see Supplement 1913.

**2558.**

This section does not authorize a city to issue bonds in payment of a subscription for stock in a railroad company. *Burlingham v. City of New Bern* (Dis. Ct.), 213 Fed. 1014.

For additional notes on this section see Supplement 1913.

**2559.**

See notes to Section 2558.

**2567.**

This section should not be construed as a grant of the right to occupy the entire street or sidewalk. *Seaboard A. L. Ry. Co. v. Raleigh* (Dis. Ct.), 219 Fed. 573.

For additional notes on this section see Supplement 1913.

5. See notes to next subsection.

6. When one railroad desires to cross another for the purpose of extending a spur track to an industrial plant, the question whether or not such extension is necessary is not a question within the jurisdiction of the court. *R. R. v. R. R.*, 165 N. C. 425, 81 S. E. 617.

Whether one railroad should be permitted to cross the yard limits of another is a question which the commissioners will always consider, and their action is subject to the supervision of the trial judge. *R. R. v. R. R.*, 165 N. C. 425, 81 S. E. 617.

**2568.**

For notes on this section see Supplement 1913.

**2569. Not to obstruct roads or ways.**

Whenever, in their construction, the works of any of said corporations shall cross established roads or ways, the corporation shall so construct its works as not to impede the passage or transportation of persons or property along the same.

If any such railroad corporation shall so construct its crossings with public streets, thoroughfares or highways, or keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or endanger the passage or transportation of persons or property along, over or across the same, the governing body of the county,

city, town, township or road district having charge, control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in writing, directing it to place said crossing in a good condition, so that persons may cross and property be safely transported across the same. And if said railroad shall fail to put said crossing in a safe condition for the passage of persons and property within thirty (30) days from and after the service of said notice, it shall be guilty of a misdemeanor and shall be punished in the discretion of the court; and each calendar month which shall elapse after the giving of said notice, and before the placing of said crossing in repair shall be a separate offense.

The notice required by this section may be served upon the agent of said railroad located nearest to said crossing, or it may be served upon the section master, whose section includes the crossing about which said notice is given.

Said notice may be served by delivering a copy to such agent or section master, or by letter properly stamped, registered and addressed to either of such persons. (1915, c. 250.)

The amending act contains the following provision as Section 2 of the act: "That this act shall in no wise be construed to abrogate, repeal or otherwise affect any existing law now applicable to railroad corporations with respect to highway and street crossings; but the duty imposed and the remedy given by this act shall be in addition to other duties and remedies now prescribed by law."

For notes on this section see Supplement 1913.

## 2575.

In awarding compensation on condemnation of a railroad right of way, recovery may be had for the impaired value of the property by reason of the easement acquired; this, as a rule, to include the market value of the land actually taken or covered by the right of way and the damages done to the remainder of the tract or portions of the land used by the owner as one tract, deducting from the estimate the pecuniary benefits or advantages which are special or peculiar to the tract in question, but not those which are shared by him in common with other owners of land of like kind in the same vicinity. *R. R. v. Armfield*, 167 N. C. 464, 83 S. E. 809.

In ascertaining the damages to the remainder of the property it is proper, among other things, to consider the inconvenience and annoyances likely to arise in the orderly exercise of the easement which interfere with the use and proper enjoyment of the property by the owner and which sensibly impair its value, and in this may be included the injury and annoyance from the jarring, noise, smoke, cinders, etc., from the operating of trains and also damage from fires to the extent that it exists from close proximity of the property and not attributable to defendant's negligence. *R. R. v. Armfield*, 167 N. C. 464, 83 S. E. 809.

Whether or not land comes within the scope of property subject to condemnation is a matter of law depending upon the finding of fact by the jury as to the nature of the land sought to be condemned, when that is put in issue by the pleadings. *R. R. v. Oates*, 164 N. C. 167, 80 S. E. 398.



The cases hold that, to the extent that the land covered by the right of way is not presently required for the purposes of the road, the owner may continue to occupy and use it in a manner not inconsistent with the full and proper enjoyment of the easement. *Coit v. Owenby*, 166 N. C. 136, 81 S. E. 1067.

The decisions of this State are to the effect that, in condemning a right of way, under ordinary proceedings, the railroad acquires an easement in the property, to be held and used as the necessities and well ordered management of the road may require, and that the company authorities are made the judges of the extent and necessities of this use. *Coit v. Owenby*, 166 N. C. 136, 81 S. E. 1067.

The mere possession of incidental powers under the charter to engage in private enterprises will not be held to deprive the corporation of the right of eminent domain to effectuate its public purposes. *Land Co. v. Traction Co.*, 162 N. C. 314, 78 S. E. 219.

Damages are speculative and too remote which allow for intended or future improvements such as laying off property into lots and their development by the expenditure of money; the making of a park of unproductive lands, etc.; nor is it competent to show a comparison of values of lands near the city which had already been developed, etc. *Land Co. v. Traction Co.*, 162 N. C. 503, 78 S. E. 299.

An electric street railway may not grant to another such corporation the right to operate on its right of way, requiring the use of additional poles, etc., without compensation to the owner. Such use is an additional burden. *Land Co. v. Traction Co.*, 162 N. C. 503, 78 S. E. 299.

In this case it was held that the Legislature had the power to authorize the Charlotte Water Works Co. to acquire an indefeasible fee simple title to land condemned, and it was also held that it was within the authority of the Legislature to authorize the city of Charlotte to change the public use of water works to that of a public park. *Torrence v. Charlotte*, 163 N. C. 562, 80 S. E. 53.

For additional notes on this section see Supplement 1913.

### 2575c.

As to effect of a lease by a railroad of its lands to private shippers and placing thereon a stretch of siding for their use, see *Slocumb v. R. R.*, 165 N. C. 338, 81 S. E. 335.

### 2575d.

In *R. R. v. Oates*, 164 N. C. 167, 80 S. E. 398, condemnation of a water power was refused upon the ground that the tract was necessary for the use of the defendant.

### 2576.

For notes on this section see Supplement 1913.

### 2578.

In this case it was held that the defendant was not entitled to have the entire mill village and plant on a 20-acre tract of land valued, and to deduct from it the supposed value of the entire tract after the new railroad was laid down, when the right of way was only 300 yards long. *R. R. v. Manufacturing Co.*, 166 N. C. 168, 82 S. E. 5.

A cotton mill corporation may recover special damages, such as impairing the physical and mechanical operation of its plant by vibration and smoke, if there is evidence of such direct injury. *R. R. v. Manufacturing Co.*, 166 N. C. 168, 82 S. E. 5.

This section does not exempt all dwelling houses, but only the dwelling house of the owner of the land sought to be condemned, and does not apply to cases where the tenant houses are merely appurtenances in the operation of a cotton mill. *R. R. v. Manufacturing Co.*, 166 N. C. 168, 82 S. E. 5.

When a railroad is run through a cotton mill village, the owners are not entitled to damages of a speculative character, such as possible inconvenience or danger to the employees by the smoke or noise or running of plaintiff's trains, or the possible inconveniences or dangers to the operatives or their children, etc. *R. R. v. Manufacturing Co.*, 166 N. C. 168, 82 S. E. 5.

For additional notes on this section see Supplement 1913.

**2579.**

For notes on this section see Supplement 1913.

**2580.**

For notes on this section see Supplement 1913.

**2584.**

For notes on this section see Supplement 1913.

**2585.**

Damages, hereunder, are limited to those which embrace the actual value of the property taken and the direct physical injuries to the remaining property. *R. R. v. Manufacturing Co.*, 166 N. C. 168, 82 S. E. 5.

In the absence of an award by the jury, the damages bear interest only from the date of the judgment. *R. R. v. Manufacturing Co.*, 166 N. C. 168, 82 S. E. 5.

For additional notes on this section see Supplement 1913.

**2587. Exceptions to report; hearing; appeal; when title vests; restitution, when.**

Within twenty days after filing the report the company or any person interested in the said land may file exceptions to said report, and upon the determination of the same by the court, either party to the proceedings may appeal to the court at term, and thence, after judgment, to the supreme court. The court or judge on the hearing may direct a new appraisal, modify or confirm the report, or make such order in the premises as to him shall seem right and proper. If the said company, at the time of the appraisal, shall pay into court the sum appraised by the commissioners, then and in that event the said company may enter, take possession of, and hold said lands, notwithstanding the pendency of the appeal, and until the final judgment rendered on said appeal. And if there shall be no appeal, or if the final judgment rendered upon said petition and proceedings shall be in favor of the company, and upon the payment by said company of the sum adjudged, together with the costs and counsel fees allowed by the court, into the office of the clerk of the superior court, then and in that event all persons who have been made parties to the proceedings shall be divested and barred of all right, estate and interest in such easement in such real estate during the corporate existence of the company afore-



said. A certified copy of such judgment under the seal of the court shall be registered in the county where the land is situated, and a copy of the same, or the original certified, may be given in evidence in all actions and proceedings, as deeds for land are now allowed to be read in evidence. All real estate acquired by any company under and pursuant to the provisions of this chapter, for the purpose of its incorporation, shall be deemed to be acquired for the public use. But if the court shall refuse to condemn the land, or any portion thereof, to the use of said company, then, and in that event, the money paid into court, or so much thereof as shall be adjudged, shall be refunded to said company. And the company shall have no right to hold said land not condemned, but shall surrender the possession of the same on demand, to the owner or owners, or his or their agent or attorney. And the court or judge shall have full power and authority to make such orders, judgments and decrees, and issue such executions and other process as may be necessary to carry into effect the final judgment rendered in such proceedings.

If the amount adjudged to be paid the owner of any property condemned under this chapter shall not be paid within one year after final judgment in the proceeding, the right under the judgment to take the property or rights condemned shall ipso facto cease and determine, but the claimant under the judgment shall still remain liable for all amounts adjudged against him except the consideration for the property. (1915, c. 207.)

For notes on this section see Supplement 1913.

**2588.**

For notes on this section see Supplement 1913.

**2589.**

For notes on this section see Supplement 1913.

**2593.**

For notes on this section see Supplement 1913.

**2598. No railroad, etc., to be established unless authorized by law.**

If any person or corporation, not being expressly authorized thereto, shall make or establish any canal, turnpike, tramroad, railroad, or plankroad, with the intent that the same shall be used to transport passengers other than such persons, or the members of such corporation, or to transport any productions, fabrics or manufactures other than their own, the person or corporation so offending, and using the same for any such purpose, shall forfeit and pay fifty dollars for every person and article of produce so transported. This section shall not apply to any narrow-gauge railroad or tramroad, nor toll roads made and established and maintained solely by the owners of the lands upon which said roads may be, the principal business of which is the transportation of logs, lumber and articles for the owners of

such railroad or tramroad: *Provided*, that the corporation commission shall have power to authorize lumber companies, having logging roads, to transport all kinds of commodities other than their own, and passengers, and to charge therefor reasonable rates, to be approved by said commission. (1907, c. 531; 1911, c. 160; 1911 (P. L. L.), c. 312; 1915, c. 6.)

For additional notes on this section see Supplement 1913.

Cited but not construed in *Herring v. Lumber Co.*, 163 N. C. 481, 79 S. E. 876.

**2601.**

For notes on this section see Supplement 1913.

**2604a.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2605.**

For notes on this section see Supplement 1913.

**2606.**

For notes on this section see Supplement 1913.

**2610a. Regulating pay of employees.**

All persons, firms, companies, corporations or associations owning, leasing or operating any railroad, or railroads, wholly or partially within this State, shall pay and settle with their employees engaged or employed in shops, round-houses, or repair shops within this State at least twice in each month, which said settlements shall not be less than two weeks nor more than three weeks apart, and shall, in such settlements, pay said employees the full amounts due them for their work and services up to the date of the preceding settlement, and such payment shall be made in lawful money of the United States, or by check or cash order redeemable by the maker thereof for its face value in lawful money of the United States upon demand of or presentation by the lawful holder thereof: *Provided*, this act shall not apply to repair shops where less than ten employees are engaged. (1915, c. 92. In effect March 5, 1915.)

**2611.**

This section provides that passengers shall be put off at the destination to which they have paid, or for which they may have received tickets, and that the carrier shall be liable to the party aggrieved in an action for damages for any negligence or refusal in the premises. *Elliott v. R. R.*, 166 N. C. 481, 82 S. E. 853.

In this case it was held that it was not the passenger's duty to hunt up the conductor and tell him to what station she was bound. It was his duty to take up her ticket, and then he would have known the station to which she had purchased a ticket. *Elliott v. R. R.*, 166 N. C. 481, 82 S. E. 853.

For additional notes on this section see Supplement 1913.



2613.

Amended, see Supplement 1913.

2616.

If the company does not comply with this provision, it is evidence of negligence or a circumstance from which negligence could be inferred by the jury, and if the negligence is found by the jury and was the proximate cause of the intestate's death, it becomes actionable. *Smith v. R. R.*, 162 N. C. 29, 77 S. E. 966.

For penalty for failure to use fenders, see Section 3801.

2617a.

Running a locomotive on the main line, at night, without a headlight is an indictable offense under this section, and hence negligence *per se*. *Powers v. R. R.*, 166 N. C. 599, 82 S. E. 972; *Shepherd v. R. R.*, 163 N. C. 518, 79 S. E. 968; and the road is responsible in damages for an injury thereby proximately caused to a pedestrian, whether he at the time was a licensee or trespasser. *Griffin v. R. R.*, 166 N. C. 624, 82 S. E. 973.

The burden is on the plaintiff to prove that the failure to have a headlight is the proximate cause of the injury. *McNeill v. R. R.*, 167 N. C. 390, 83 S. E. 704.

It is not the absence of the headlight, nor the impact of the train, which determines liability, but the impact of the train brought about by or as the proximate result of the absence of the headlight. *McNeill v. R. R.*, 167 N. C. 390, 83 S. E. 704.

For a case in which the plaintiff's intestate was alleged to have been killed by defendant's train when running without a headlight, see *McNeill v. R. R.*, 167 N. C. 390, 83 S. E. 704.

2618.

Cited but not construed in *Lankford v. R. R.*, 165 N. C. 653, 81 S. E. 998.

For additional notes on this section see Supplement 1913.

2619.

See notes to Section 3618.

2622.

For notes on this section see Supplement 1913.

2622e.

Amended, see Supplement 1913.

2624.

For notes on this section see Supplement 1913.

2628.

For notes on this section see Supplement 1913.

2629.

In this case the verdict established the fact that the plaintiff was ejected from the train at a place forbidden by statute, and after the conductor had accepted and retained his ticket, and it was held that upon either ground the judgment should be affirmed. *Mott v. R. R.*, 164 N. C. 367, 79 S. E. 867.

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A passenger was carried beyond his destination, and put off at a regular station; he then purchased a return ticket and tendered it to the conductor, who accepted it, but also demanded fare from the passenger's original destination to point at which he was put off, and upon the passenger's refusal to pay, he was ejected. *Held*: That the ejection was wrongful. *Mott v. R. R.*, 164 N. C. 367, 79 S. E. 867.

Where an adult has paid fare to his destination and the same has been received by the company, the right to expel him from the train by reason of the failure or refusal to pay on the part of his child does not arise until the company or its agents, the conductor or other, etc., has returned or made offer to return the unearned portion of the fare or given a stop-over check or other written acknowledgment which will enable the adult to proceed on his trip at a later time. *Lankford v. R. R.*, 165 N. C. 653, 81 S. E. 998.

For additional notes on this section see Supplement 1913.

## 2629b(9). Rate for shorter haul not to exceed rate for longer haul.

(This subsection repealed and by the terms of the repealing act "Section eleven hundred and seven (1107) of the Revisal of one thousand and nine hundred and five (1905) is hereby substituted therefor, and declared to be in full force." (1915, c. 17.))

## 2631.

The refusal to issue a bill of lading for a lot of loose, unbaled hay was a refusal to receive the hay for shipment, and the fact that the agent had permitted plaintiff to load the hay into a car makes no difference. *Tilley v. R. R.*, 162 N. C. 37, 77 S. E. 994.

Where the rule prescribed by the Corporation Commission is that the articles offered for shipment shall be "in good shipping condition, well prepared by the shipper with proper packing and legible, plain marking," the carriage of loose peavine hay, not baled, marked or packed, is prohibited by plain implication. *Tilley v. R. R.*, 162 N. C. 37, 77 S. E. 994.

Where the Corporation Commission has authorized the transportation of baled hay and fixed and approved the charges therefor, but by its prescribed classification does not authorize the classification of unbaled, loose hay, the company is not liable for the penalty by refusing to receive unbaled hay. *Tilley v. R. R.*, 162 N. C. 37, 77 S. E. 994.

A railroad company is liable for not furnishing cars for the shipment of piling not actually placed on defendant's right of way when the company has refused to move cars which plaintiff has loaded, and he has filled the depot yard and the station lane with the piling and demanded cars upon which to load it and the railroad has refused to furnish them. *Bell v. R. R.*, 163 N. C. 180, 79 S. E. 421.

For additional notes on this section see Supplement 1913.

## 2632.

For notes on this section see Supplement 1913.

## 2633.

In the absence of a conflicting regulation by Congress, this section is constitutional and valid. *Jeans v. R. R.*, 164 N. C. 224, 80 S. E. 242.

Where a consignee brings his action to recover the value of a shipment of goods from the carrier, shows that the shipment was addressed to him, was prepaid, in the carrier's possession at destination, and a



demand for delivery, the burden is on the carrier to show a valid reason for its refusal to deliver the shipment. *Jeans v. R. R.*, 164 N. C. 224, 80 S. E. 242.

The railroad may require a bill of lading to be produced and the plaintiff must produce it, unless he can show a good excuse for not so doing. *Jeans v. R. R.*, 164 N. C. 224, 80 S. E. 242.

Delivery of a shipment of liquor to a druggist may be refused upon the ground that such shipment would be unlawful though it calls into question the validity of the license held by the druggist. *Smith v. Express Co.*, 166 N. C. 155, 82 S. E. 15.

Cited but not construed in *Thurston v. R. R.*, 165 N. C. 598, 81 S. E. 781.

For additional notes on this section see Supplement 1913.

#### 2634.

Amended, see Supplement 1913.

This section is no longer applicable as to interstate shipments, having been superseded by Classification No. 22, Rule 9, prescribed by the Interstate Commerce Commission under authority conferred on it by Congress. *Morris v. Express Co.*, 167 N. C. 139, 83 S. E. 1. See also *Jeans v. R. R.*, 164 N. C. 224, 80 S. E. 242.

Stipulations in a bill of lading requiring the claim to be made in writing within four months is reasonable, and the failure of the plaintiff to comply with the same, bars his rights to recover damages and the statutory penalty. *Forney v. R. R.*, 167 N. C. 641, 83 S. E. 686.

For a discussion of this section, see *Supply Co. v. R. R.*, 166 N. C. 82, 82 S. E. 13.

For additional notes on this section see Supplement 1913.

#### 2634a.

It is the common law duty to transport freight tendered it within a reasonable time; hence, where the recovery of the penalty prescribed by this section is not sought, but the action is to recover damages for the carrier's failure to receive and ship the goods, a written demand for the cars is not required, and a verbal one is sufficient. *Bell v. R. R.*, 163 N. C. 180, 79 S. E. 421.

As to the liability of a railroad company which furnishes smaller cars than those ordered, see *Furniture Co. v. R. R.*, 162 N. C. 138, 78 S. E. 67.

For additional notes on this section see Supplement 1913.

#### 2642.

Cited but not construed in *Supply Co. v. R. R.*, 166 N. C. 82, 82 S. E. 13.

#### 2643.

The penalty imposed by this section is not an interference with interstate commerce and is constitutional and valid. *Thurston v. R. R.*, 165 N. C. 598, 81 S. E. 785.

#### 2644.

This section is not an interference with interstate commerce, and is constitutional and valid. *Thurston v. R. R.*, 165 N. C. 598, 81 S. E. 785; *Supply Co. v. R. R.*, 166 N. C. 82, 82 S. E. 13.

The defendant will not be permitted to mislead the plaintiff and induce it to file a claim for more than it can recover, and then escape

liability upon the ground that the claim is excessive. *Supply Co. v. R. R.*, 166 N. C. 82, 82 S. E. 13.

A recovery under this section may be had, although the plaintiff has failed to sustain his claim in full, and such recovery is not a taking of the property of the defendant without due process. *Supply Co. v. R. R.*, 166 N. C. 82, 82 S. E. 13.

For additional notes on this section see Supplement 1913.

## 2645.

The expression in this section, "any cattle or other live stock," cannot be construed as applicable to geese or other fowl, and no presumption of negligence against the railroad company is raised by the mere fact of killing them upon its track in the operation of its trains. *James v. R. R.*, 166 N. C. 572, 82 S. E. 1026.

The presumption of negligence in killing live stock, when the action is brought within six months, applies though the facts are known. *Hanford v. R. R.*, 167 N. C. 277, 83 S. E. 470.

The presumption of negligence arises from the fact of killing, whether the animal was hitched to a wagon or is running at large. *Hanford v. R. R.*, 167 N. C. 277, 83 S. E. 470.

## 2645a.

Chapter 256, Laws 1915, contains the provision that this section "shall not be construed to repeal any of the provisions of section two thousand six hundred and forty-six of the Revisal of one thousand nine hundred and five."

For a case in which damages were diminished in proportion to the contributory negligence of the employee, see *Ingle v. R. R.*, 167 N. C. 636, 83 S. E. 744.

For an extended discussion of the rule as to measurement of damages when contributory negligence is shown, see opinion of Walker, J. (dissenting), in *Tilgman v. R. R.*, 167 N. C. 163, 83 S. E. 315, 1090.

For additional notes on this section see Supplement 1913.

## 2646.

Chapter 256, Laws 1915, provides that Chapter 6, Laws 1913 (Section 2645a), "shall not be construed to repeal any of the provisions of section two thousand six hundred and forty-six of the Revisal of one thousand nine hundred and five"; and also contains the following provision: "That each and every of the provisions of section two thousand six hundred and forty-six of the Revisal of one thousand nine hundred and five be and the same are hereby re-enacted as the Law of North Carolina."

A baggage agent and his assistant are fellow-servants under this section. *Moore v. R. R.*, 165 N. C. 439, 81 S. E. 603.

A railroad company is responsible for the death of one of its employees caused by the negligent handling of a pistol in the hands of a fellow-servant in the course of his employment. *Moore v. Railroad*, 165 N. C. 439, 81 S. E. 603.

It seems that when two fellow-servants are both joint agents of two railroads, and one is killed by the other, in the course of his employment, the road by which they are employed and paid may be sued for damages, although at the time they may have been engaged actually in performing service for the other. *Moore v. R. R.*, 165 N. C. 439, 81 S. E. 603.

For a discussion of "relief departments" in connection with this section, see opinion of Clark, C. J., dissenting, in *Nelson v. R. R.*, 167 N. C. 185, 83 S. E. 322.



Discussed in concurring opinion of Clark, C. J., and dissenting opinion of Brown, J., in *Horton v. R. R.*, 162 N. C. 424, overruled in *Seaboard Air Line v. Horton*, 233 U. S. 492.

Cited but not construed in *Clark v. Wright*, 167 N. C. 646, 83 S. E. 775; *North Car. R. Co. v. Zachary*, 232 U. S. 248, reversing *Zachary v. R. R.*, 156 N. C. 496; *Seaboard Air Line v. Horton*, 233 U. S. 492, overruling *Horton v. R. R.*, 162 N. C. 424; *Ridge v. R. R.*, 167 N. C. 510, 83 S. E. 762.

For additional notes on this section see Supplement 1913.

**2646a.**

Amended, see Supplement 1913.

**2658.**

For notes on this section see Supplement 1913.

**2663a.**

For notes on this section see Supplement 1913.

**2666.**

For notes on this section see Supplement 1913.

**2670.**

For notes on this section see Supplement 1913.

**2671.**

For notes on this section see Supplement 1913.

**2672.**

For notes on this section see Supplement 1913.

**2673.**

For notes on this section see Supplement 1913.

**2674a. Benevolent orders may appoint trustees, who may hold and transfer property.**

Lodges of Masons, Odd Fellows and Knights of Pythias, camps of the Woodmen of the World, councils of the Junior Order of United American Mechanics, orders of the Elks, Young Men's Christian Associations, Young Women's Christian Associations, societies for the care of orphan and indigent children, societies for the rescue of fallen women, and any other benevolent or fraternal orders and societies, may appoint from time to time suitable persons trustees of their bodies or societies in such manner as such body or society may deem proper, which trustees, and their successors, shall have power to receive, purchase, take and hold property, real and personal, in trust for such benevolent society, or body; and such trustees shall have the power when instructed so to do by resolution adopted by the said societies, or body, of which they are trustees, to sell and convey in fee-simple any real or personal property owned by said body or society; and such conveyances so made, or hereafter to be made, by said trustees shall be effective to pass said land or property in fee-simple to the purchaser. And in case there shall be no trustees, then any property, real or per-

sonal, which could be held by said trustees, shall vest in and be held by said charitable, benevolent, religious, or fraternal orders and societies, respectively, according to such intent: *Provided*, this act shall not affect vested rights, or apply to any pending action. (1907, c. 22; 1915, cc. 149, 186.)

**2675.**

For notes on this section see Supplement 1913.

**2676.**

For notes on this section see Supplement 1913.

**2680.**

For notes on this section see Supplement 1913.

**2681.**

For notes on this section see Supplement 1913.

**2683.**

The advisability of opening a road or street or of widening the same is committed by law to the sound discretion of the local authorities, charged with the duty of determining what is best for the public in that respect, and with the exercise of this discretion the courts will not interfere. *Luther v. Commissioners*, 164 N. C. 241, 80 S. E. 386.

**2685.**

For notes on this section see Supplement 1913.

**2686.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2689.**

For notes on this section see Supplement 1913.

**2690.**

For notes on this section see Supplement 1913.

**2691a(1). Central highway established; termini and route.**

(Amended by inserting after the word "Guilford" the words "or through Forsyth, Davie." Laws 1915, c. 132.)

**(4). Board of trustees; executive committee; local committees.**

(Amended by inserting in line fifteen after the word "Guilford" the words "P. H. Hanes of Forsyth, A. T. Grant, Jr., of Davie." Laws 1915, c. 132.)

**2691c. Bond issues authorized; limit of amount; obligation of bonds.**

(1) For the purpose of laying out, establishing, altering, repairing, grading, constructing and improving in any way the public roads in various townships of the state, and for purchasing machinery, tools, etc., necessary for such improvements, the boards of county commis-



sioners of any county are authorized, empowered and directed to issue coupon bonds bearing interest at a rate not to exceed six per cent per annum, payable semi-annually at the office of the treasurer of the county issuing such bonds, to an amount not to exceed fifty thousand dollars for any one township in any county, in the manner and under the restrictions hereinafter provided, and the bonds so issued by the commissioners of the county shall be paid by the township for which they are issued, and shall not be chargeable against any property or polls outside of such township. The board of county commissioners in performing the duties of issuing, selling and purchasing bonds or doing any other thing under this act shall be deemed the agent of any township acting under this act. (1913, c. 122, s. 1; 1915, c. 237.)

Amended as to Holly Grove Township, Gates County. P. L. L. 1915, c. 659.

For the remainder of the act of 1913, see this section number in Gregory's Supplement.

#### **2691d. Commissioners may sell bonds authorized.**

Wherever any township in any county in the State shall have voted bonds under the provisions of chapter one hundred and twenty-two of the Public Laws of one thousand nine hundred and thirteen [Section 2691c], the county commissioners of said county are hereby authorized and directed to sell bonds so voted at rates of interest not exceeding six per cent. (1915, c. 237. In effect March 9, 1915.)

#### **2698.**

For notes on this section see Supplement 1913.

#### **2701.**

For notes on this section see Supplement 1913.

#### **2711a(1). State Highway Commission established.**

A State highway commission is hereby established, whose duties it shall be to assist the counties in developing a State and county system of highways as set forth most specifically hereinafter.

#### **(2). How constituted.**

The State highway commission shall consist of the governor, three citizens of the State of North Carolina to be appointed by the governor, one from the eastern, one from the central, and one from the western portion of the State, one of which shall be a member of the minority political party, the State geologist, a professor of civil engineering of the University of North Carolina, and a professor of the North Carolina Agricultural and Mechanical College, said professors to be designated by the governor. The members of the commission shall be appointed and serve for four years and until their successors are appointed; the members of the commission shall, when employed in any manner required of them under this act receive their actual expenses.

**(3). Governor to fill vacancies.**

The governor shall fill all vacancies in the commission caused by death or otherwise and he shall have the power to remove any member for due cause.

**(4). State highway engineer appointed.**

The commission shall appoint a civil engineer well versed in the science of road building and maintenance, who shall be the State highway engineer, whose compensation shall be fixed by the State highway commission. The term of office of the State highway engineer shall be six years from the date of his appointment unless removed from office for due cause by the highway commission.

**(5). Offices.**

The proper State authorities shall furnish and provide suitable offices for the State highway commission in the city of Raleigh, and shall provide it with the necessary office supplies, fixtures and stationery.

**(6). Assistants and clerks.**

The State highway commission may employ such assistants and clerks as in its opinion the needs of the State demand. The salaries paid such assistants and clerks shall be determined by the State highway commission.

**(7). Duties of the highway engineer.**

Upon the written request of the road officials of any county desiring to avail themselves of the services of the highway engineer on the terms of this act, for advice in regard to the improvement of any bridge, road, roads or section thereof, the highway engineer shall survey or have surveyed such bridge, road, roads, or sections of road, and shall prepare, or have prepared, such maps, profiles, plans and specifications as are necessary in his judgment to determine the cost of the proper improvement of such bridge, road, roads, or sections of road; and these, together with the estimated cost, shall be presented to the board of county commissioners or other officials in authority, who made the request for such information, at their next regular meeting held after the completion of such surveys and estimates. If such bridge, road, roads, or section of road should thereafter be built by the county officials it shall be constructed according to the plans and specifications as furnished by the highway engineer. In the event that the construction work on any such bridge, road, roads, or section of road is not started within twelve months after the highway engineer makes his report to the county officials, the county officials shall, and are hereby directed to, reimburse the State highway commission for the expense incurred by its office in obtaining the information furnished the county officials. Should, however, the construction be taken up at a later



date, the highway engineer, when he takes charge of the actual construction shall return said amount to the county officials. The highway engineer, or his duly authorized assistants, shall have entire charge of the location, construction, and maintenance of all roads, bridges, etc., constructed under this section. The State highway engineer shall keep an accurate record of all costs and expenditures of his office. He shall supply technical information regarding roads to any citizen or officer in the State, and shall, from time to time, publish for public use such information as will be generally useful for road improvements. Such publications and his biennial report to the legislature shall be printed at the expense of the State, as other public documents.

**(8). State highway system.**

The State highway engineer shall from time to time make surveys, prepare plans, profiles, specifications, and estimates of the cost of a system of highways connecting by the most direct and practical route all the county seats and principal cities of the State. He shall make a detailed report to the State highway commission of the mileage and cost in each county. He shall state the type and class of road suitable for each section. He shall give the average number and class of teams which each section of road is at present accommodating and the probable increase in traffic which would follow improvements as recommended by him.

**(9). Location of roads.**

In the location of roads provided for in sections seven and eight, the highway engineer shall so locate them as to serve the needs of the people in the immediate section in so far as this would not conflict with such roads being links in the system of highways provided for in section eight of this act.

**(10). Consultation and assistance from members of commission.**

The State highway engineer may call into consultation, for any engineering problem confronting him, the State highway commission.

**(11). Open meeting in counties.**

The State highway commission shall upon written request of the county commissioners of any county, call an open meeting to be held at the office of the county commissioners within such county, for the purpose of affording instruction relative to matters pertaining to road and bridge construction, maintenance and repairs. Such meeting shall be conducted by the State highway engineer or one of his assistants designated for the purpose by the State highway engineer. Upon receipt of the notice of the date of such meeting from the State highway commission the county commissioners shall call such meeting on the date set by the State highway commission, and shall be present

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themselves and notify the county engineer, the commissioners of each township and the superintendent of each road district within the county to be present at such meetings, in person. Each of the county, township and road district officials above mentioned shall be paid the regular per diem allowance; in the usual manner, for the actual time in attendance at such meetings. The members of the commission when employed in any manner required of them under this act shall receive their actual expenses.

### **(12). Co-operation with other states.**

It shall also be the duty of the State highway commission, where possible, to cooperate with the State highway commissions of other States and with the Federal government in the correlation of roads so as to form a system of inter-county, inter-state and national highways.

### **(13). Appropriation.**

The sum of ten thousand dollars annually or so much thereof as may be necessary, is hereby appropriated out of moneys in the State treasury not otherwise appropriated for the purpose of carrying out the provisions of this act.

### **(14). Report of expenditures.**

The State highway commission shall on the first day of January and the first day of July of each year, make an itemized statement to the governor showing specifically for what purpose and to whom expended the moneys appropriated under this act. (1915, c. 113. In effect March 5, 1915.)

### **2712.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

### **2713-2715.**

For notes on these sections see Supplement 1913.

### **2716.**

See notes to Section 3779.

Amended, see Supplement 1913.

### **2717-2720.**

For notes on these sections see Supplement 1913.

### **2721.**

Amended as to Oneals Township, Johnston County. P. L. L. 1915, c. 293.

For notes on this section see Supplement 1913.

### **2722-2724.**

For notes on these sections see Supplement 1913.



**2725. Who liable.**

All able-bodied male persons between the ages of eighteen years and forty-five years (between twenty-one years and forty-five years in Columbus, Brunswick, Henderson, New Hanover, Bladen and Tyrrell counties) shall be required under the provisions of this chapter to work on the public roads, except the members of the board of supervisors of public roads; but no person shall be compelled to work more than six days in any one year, except in case of damage resulting from a storm: *Provided*, that ten days instead of six days shall be the limit as to the counties west of the Blue Ridge. (P. L. L. 1911, c. 160; P. L. L. 1913, c. 238; P. L. L. 1915, c. 350.)

For notes on this section see Supplement 1913.

**2726.**

For notes on this section see Supplement 1913.

**2726a.**

(Chapter 83, Laws 1915, provides that this act shall not be construed to repeal Chapter 340, Private Laws of 1911.)

**2727.**

For notes on this section see Supplement 1913.

**2728a.**

1. An automobile is not *per se* a dangerous machine, and its owner is not liable for personal injuries caused by it merely because of his ownership. *Linville v. Nissen*, 162 N. C. 95, 77 S. E. 1096.

For additional notes on this section see Supplement 1913.

6. While the violation of a city ordinance may be negligence *per se*, it is necessary that the plaintiff show that this negligence was the proximate cause of the injury complained of. *Ledbetter v. English*, 166 N. C. 125, 81 S. E. 1066.

15. The words "intersecting highways" in the last clause of this section includes all space made by the junction of frequented streets of a town, though one of the streets enters the other without crossing or going beyond it. *Manly v. Abernathy*, 167 N. C. 220, 83 S. E. 343.

For the reason why the rules applicable to street cars are inapplicable to automobiles, see *Barnes v. Public Service Corporation*, 163 N. C. 363, 79 S. E. 881.

16. See *Linville v. Nissen*, 162 N. C. 95, 77 S. E. 1096, for case where one car ran into another, both going in same direction.

**2728b. Boys' Road Patrol.**

1. The Board of Agriculture is hereby charged with the duty of organizing a brigade of school boys in this State to be called the Boys' Road Patrol, and to be composed of boys who attend the rural public schools of the State.

2. The duties of such patrol to be to look after the maintenance of the stretch of road indigenous to each member of the patrol, dragging and ditching same by the use of machinery placed in the care of the

patrol by the State and county in such manner as the Board of Agriculture shall direct.

3. The said Board of Agriculture is specially authorized and empowered and directed to devise, organize and adopt all such rules and regulations as may be necessary for effectually carrying out the purposes of this act; may award suitable prizes and pay all such expenses of successful competitor and others engaged in such work in attendance upon meetings and other purposes.

4. All moneys for the carrying out of this act shall be provided by the counties themselves in cooperation with the Department of Agriculture.

5. Said brigade shall not be organized in any county until the commissioners of said county set apart and appropriate not less than one hundred dollars for the purposes of this act to be spent in said county by the Board of Agriculture.

6. The commissioners of the counties of North Carolina are empowered to make donation annually out of the county funds for the purposes of this act. (1915, c. 239. In effect March 9, 1915.)

**2732.**

Amended, see Supplement 1913.

**2736.**

Amended, see Supplement 1913.

**2737.**

For notes on this section see Supplement 1913.

**2739.**

For notes on this section see Supplement 1913.

**2741.**

For notes on this section see Supplement 1913.

**2744.**

For notes on this section see Supplement 1913.

**2745.**

For notes on this section see Supplement 1913.

**2746.**

For notes on this section see Supplement 1913.

**2748.**

Amended, see Supplement 1913.

**2748b. Additional clerical assistance for the State Library.**

The trustees of the state library are hereby authorized to employ additional clerical help in the management of the state library, when in their judgment it becomes necessary, and for this purpose the sum of five hundred dollars is hereby allowed annually out of any money in the treasury not otherwise appropriated. (Ex. Sess. 1913, c. 33; 1915, c. 74.)



**2749.**

For notes on this section see Supplement 1913.

**2750. Adjutant general.**

The salary of the adjutant general shall be three thousand dollars per annum. The adjutant general shall be allowed all such necessary expenses as may be incurred in printing, clerk hire, making the blank forms, books, orders and reports required in his office not to exceed one thousand dollars. (1907, c. 803; 1911, c. 110; 1915, c. 118.)

**2751.**

For notes on this section see Supplement 1913.

**2753. Commissioner of labor and printing.**

The salary of the commissioner of labor and printing shall be three thousand dollars per annum; and the salary of the assistant commissioner shall be two thousand dollars per annum. They shall also receive their actual traveling expenses while traveling for the purpose of collecting the information and statistics as provided by law. (1909, c. 42; 1911, c. 157; 1915, cc. 157, 177.)

For notes on this section see Supplement 1913.

**2754.**

For notes on this section see Supplement 1913.

**2756.**

For notes on this section see Supplement 1913.

**2756b. Salaries of certain employees of the insurance department.**

The person employed in the insurance department as actuary and deputy shall receive a salary of two thousand two hundred dollars (\$2,200). The person employed in said department as chief deputy shall receive a salary of two thousand dollars (\$2,000). The person employed in said department as chief clerk and accountant shall receive a salary of two thousand dollars (\$2,000). And the person employed in said department as cashier and stenographer shall receive an annual salary of one thousand one hundred dollars (\$1,100). (1913, c. 194; 1915, c. 158.)

**2762.**

For notes on this section see Supplement 1913.

**2762d. Providing a name for the old Supreme Court building and a custodian and laborers therefor.**

1. The building formerly occupied by the Supreme Court and the State Library and others shall be, and the same is officially designated the State Departments Building.

2. The Board of Public Buildings and Grounds be, and it is hereby authorized to employ a custodian for the said State Departments Build-

ing at a salary not to exceed eighteen dollars per week, and a janitor at a salary not to exceed seventeen dollars per week, and an elevator operator at a salary not to exceed seven dollars and fifty cents per week.

3. The keeper of public buildings and grounds be and he is hereby authorized to add the names of the persons appointed to the aforesaid positions to his weekly pay roll, and the State Auditor is directed to draw his warrant on the State Treasurer for an amount sufficient to pay the above allowances. (1915, c. 187. In effect March 9, 1915.)

#### **2764. Supreme Court justices.**

Each justice of the supreme court shall be paid an annual salary of four thousand dollars, payable monthly, and two hundred and fifty dollars per annum, in lieu of and in commutation for traveling expenses. They shall each be allowed nine hundred dollars per annum for stenographer or clerk. (1907, cc, 841, 988; 1909, c. 486; 1911, c. 82; 1915, c. 44.)

#### **2765.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

#### **2768. Fees of solicitors.**

The solicitors shall, in addition to the general compensation allowed them by the State, receive the following fees, and no other, namely:

For every conviction under an indictment charging a capital crime, whether by plea or verdict, twenty-five dollars.

For perjury, forgery, counterfeiting, passing or attempting to pass or sell any forged or counterfeited paper or evidence of debt; maliciously injuring or attempting to injure any railroad or railroad car, or any person traveling on such railroad car; stealing or obliterating records; stealing, concealing, destroying or obliterating any will; maliciously burning or attempting to burn houses or bridges, seduction, slander of an innocent woman, and embezzlement; breaking into houses otherwise than burglariously; misdemeanors of accessories after the fact to felonies; in each of the above cases, fifteen dollars.

For larceny, receiving stolen goods, frauds, maims, deceits and escapes, eight dollars.

For all other offenses five dollars.

The fees in all the above cases are to be taxed in the costs against the party convicted; but where the party convicted is insolvent, the solicitor's fees shall be one-half, to be paid by the county in which the indictment was found, except that for convictions under an indictment charging a capital crime, whether by plea or verdict, forgery, perjury, conspiracy, seduction, slander of an innocent woman, embezzlement, breaking into houses otherwise than burglariously, and when defendants are convicted and assigned to work on the public roads of any county in this State, they shall receive full fees: Provided that no larger fee than ten dollars



shall be taxed for the solicitor in an indictment against the justices of the peace of any county, as justices, when there are more than three justices who are found guilty.

The solicitors of the several judicial districts and criminal courts shall prosecute all penalties, and forfeited recognizances entered in their courts respectively, and as compensation for their services shall receive a sum to be fixed by the court, not more than five per centum of the amount collected upon such penalty or forfeited recognizance.

For performing his duty for the appointment of a receiver of an estate of a minor, they shall receive not to exceed ten dollars, to be fixed by the judge; and in passing on the returns of the receivers in such cases where the estate of the infant does not exceed five hundred dollars, the fee of the solicitor shall not exceed five dollars, and where the estate exceeds five hundred dollars, his fee shall not exceed ten dollars, to be fixed by the judge, and in each case to be paid out of the fund. Each and every solicitor in the State of North Carolina shall keep an itemized account of all fees received hereunder from the first day of December, one thousand nine hundred and fifteen, to the first day of December, one thousand nine hundred and sixteen, and shall file such statement, duly verified, with the Governor of North Carolina on or before the first day of January, one thousand nine hundred and seventeen. (1915, cc. 16, 69, 86.)

For notes on this section see Supplement 1913.

**2770.**

Amended, see Supplement 1913.

**2771.**

Amended, see Supplement 1913.

**2771a.**

Amended, see Supplement 1913.

**2771d(2). In executive department.**

a. The salaries of the employees of the executive department shall be as follows; and no more: The private secretary of the governor shall receive an annual salary of two thousand dollars. There shall also be to the governor an executive secretary, who shall receive a salary of twelve hundred dollars per annum and who shall not be required to do clerical work for or allowed to receive pay from the adjutant general's office for which three hundred dollars has heretofore been allowed; and for additional clerical assistance the executive department shall be allowed a sum not exceeding nine hundred dollars per annum.

b. The salaries for secretaries and clerks in the governor's office be, and they are hereby provided as they were by chapter ninety-five of the Public Laws of one thousand nine hundred and eleven.

c. The compensation herein provided for the executive secretary shall operate and relate from the beginning of the fiscal year, December

first, one thousand nine hundred and fourteen. (1907, c. 830, s. 2; 1911, c. 95; 1913, c. 1; 1915, c. 50.)

**(6). In department of public instruction.**

The salaries of the employees in the department of public instruction shall be as follows, and no more: The chief clerk shall receive a salary of seventeen hundred dollars per annum; the loan fund clerk shall receive a salary of eighteen hundred dollars per annum, the same to be paid out of the State loan fund for building public school-houses, and the stenographer shall receive a salary of nine hundred dollars per annum. (1907, c. 830, s. 6; 1915, c. 247.)

**(9). In department of labor statistics.**

The salaries of the employees in the department of labor statistics shall be as follows, and no more: The assistant commissioner shall receive a salary of two thousand dollars per annum, and the stenographer a salary of nine hundred dollars per annum. (1907, cc. 830, 989; 1911, c. 190; 1915, c. 157.)

**(10). In department of insurance commissioner.**

The salaries of the employees in the department of the insurance commissioner shall be as follows, and no more: The deputy insurance commissioner shall receive a salary of eighteen hundred dollars per annum; the chief clerk shall receive a salary of fifteen hundred dollars per annum; the bookkeeper shall receive a salary of nine hundred dollars per annum; the license clerk shall receive a salary of twelve hundred dollars per annum, and the stenographer shall receive a salary of nine hundred dollars per annum; a deputy insurance commissioner and accountant, who shall receive a salary of eighteen hundred dollars (\$1,800) per annum. (1907, cc. 830, 995; 1909, c. 839; 1911, cc. 108, 208, 210; 1915, cc. 156, 171.)

**(11). Laborers, janitors and watchmen.**

The governor's office, the treasurer's office, the secretary of state's office, the auditor's office, and the corporation commission shall each be allowed one servant, and the officers of the superintendent of public instruction and the attorney-general shall together be allowed one servant. Such servants shall each receive as compensation the sum of ten dollars and fifty cents per week, except the servant in the office of the superintendent of public instruction, who shall receive twelve dollars per week, to be paid by the state treasurer. The night watchman and janitor of the capitol building and gardener of the capitol square shall receive two dollars and fifty cents per day. The night watchman at the supreme court room shall receive fourteen dollars per week, and the firemen at the supreme court room and capitol buildings shall receive seventeen dollars and fifty cents per week. The night watchman at the governor's mansion shall receive fourteen dollars per week, all to be



paid by the state treasurer. The night watchman at the department of agriculture shall receive sixty dollars per month, to be paid out of funds belonging to said department. The adjutant-general may employ a janitor, whose salary shall be ten dollars and fifty cents per week. The commissioner of labor and printing may employ a janitor, whose salary shall be five dollars per week. (1907, cc. 830, 989; 1909, cc. 887, 797; 1915, cc. 232, 247.)

**2773.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2774.**

Under Constitution Article VII, Sections 2 and 14, the Legislature may create a public road commission of a county and invest these commissioners with the same powers conferred on the county commissioners with reference to pledging the faith and credit of the county for public road purposes which are conferred on the county commissioners by this section. Commissioners v. Commissioners, 165 N. C. 632, 81 S. E. 1001.

**2775.**

Amended, see Supplement 1913.

**2776.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2777.**

Amended, see Supplement 1913.

**2778.**

Amended, see Supplement 1913.

**2782.**

Amended, see Supplement 1913.

**2785.**

As nearly every county has a separate law as to the payment of its commissioners, a compilation of them has not been deemed of sufficient general interest for publication in this volume.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2786. County board of education.**

The members of the county board of education shall receive three dollars per diem and five cents a mile to and from their respective places of meeting. (1915, c. 236, s. 2.)

Amended as to Madison County only. P. L. L. 1915, c. 365.

**2786a.**

(The name of Duplin County is struck out of Section 2. 1915, c. 24.)

**2791.**

Amended, see Supplement 1913.

**2792.**

For notes on this section see Supplement 1913.

**2797a.**

For notes on this section see Supplement 1913.

**2797b.**

For notes on this section see Supplement 1913.

**2798.**

As nearly every county has a separate law as to the payment of jurors, a compilation of them has not been deemed of sufficient general interest for publication in this volume.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2799. Jailers.**

Jailers shall receive, for furnishing prisoner with fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, a sum not exceeding twenty-five cents per day, unless the board of commissioners of the county shall deem it expedient to increase the fees, which it may do provided such increase shall not exceed eighty per cent. on the above sum. But whatever sum may be fixed on by the commissioners shall be recorded, and shall not be altered within one year thereafter. (1915, c. 261.)

The amending act, which allows the commissioners to increase the jailers compensation to eighty per cent. instead of fifty, provides that it shall not apply to Hoke, Cabarrus and Robeson counties. Amended as to Duplin County only. P. L. L. 1915, c. 156.

For additional notes on this section see Supplement 1913.

**2802.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

McDowell County inserted after Rowan, making the fee of the county surveyor of that county \$3.00 per diem. (P. L. L. 1915, c. 607.)

**2803.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**2806. Keeper of capitol.**

The salary of the keeper of the capitol, or superintendent of public buildings and grounds, shall be twelve hundred dollars per annum, which shall include his compensation as keeper of the arsenal. (1907, c. 989; 1915, c. 150.)

**2807.**

Amended, see Supplement 1913.



**2812.**

For notes on this section see Supplement 1913.

**2830.**

Cited but not construed in *R. R. v. Oates*, 164 N. C. 167, 80 S. E. 398.  
For additional notes on this section see Supplement 1913.

**2831.**

As between conflicting provisions of the same statute, the last in order of arrangement will control, and where a proviso in a statute is directly contrary to the purview of the statute the proviso is good, and not the purview. *Supply Co. v. Eastern Star Home*, 163 N. C. 513, 79 S. E. 964; *Cecil v. High Point*, 165 N. C. 431, 81 S. E. 616.

Where the requirements of a statute are mandatory in terms, it must be strictly construed. *Asbury v. Albemarle*, 162 N. C. 247, 78 S. E. 146; *Sewerage Co. v. Monroe*, 162 N. C. 275, 78 S. E. 151.

When statutes make use of words of definite and well known sense in the law, they are to be received and expounded in the same sense in the statute. *Asbury v. Albemarle*, 162 N. C. 247, 78 S. E. 146; *Sewerage Co. v. Monroe*, 162 N. C. 275, 78 S. E. 151.

Statutes in derogation of common rights, as conferring special privileges are to be construed liberally in favor of the public and strictly against those specially favored. *Asbury v. Albemarle*, 162 N. C. 247, 78 S. E. 146; *Sewerage Co. v. Monroe*, 162 N. C. 275, 78 S. E. 151.

Where the language of a statute is free from ambiguity the courts should not hesitate to give it a literal interpretation merely because they may question the wisdom or expediency of the enactment. *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442. In this case the rules for construing ambiguous statutes are discussed by Walker, J.

For additional notes on this section see Supplement 1913.

**2832.**

For notes on this section see Supplement 1913.

**2838a.**

For notes on this section see Supplement 1913.

**2840.**

For notes on this section see Supplement 1913.

**2842.**

For notes on this section see Supplement 1913.

**2844.**

A discharge in bankruptcy, issued to the principal as to debts existent on September 7th, would seem to be conclusive on the question of insolvency, when the action is instituted on September 11th following. *Shuford v. Cook*, 164 N. C. 46, 80 S. E. 61.

The right to a demand of notice will be considered as waived when all liability is denied in the answer. *Shuford v. Cook*, 164 N. C. 46, 80 S. E. 61.

For evidence held insufficient to constitute one of the sureties a "supplemental surety," see *Shuford v. Cook*, 164 N. C. 46, 80 S. E. 61.

For additional notes on this section see Supplement 1913.

2846      AMENDMENTS AND NOTES TO REVISAL

2846.

For notes on this section see Supplement 1913.

2855.

For notes on this section see Supplement 1913.

2857-2860.

For notes on these sections see Supplement 1913.

2862.

For notes on this section see Supplement 1913.

2863.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

2864.

For notes on this section see Supplement 1913.

2866.

For notes on this section see Supplement 1913.

2867.

For notes on this section see Supplement 1913.

2869.

For notes on this section see Supplement 1913.

2884.

For notes on this section see Supplement 1913.

2886.

For notes on this section see Supplement 1913.

2888.

Amended, see Supplement 1913.

2901.

For notes on this section see Supplement 1913.

2903.

The requirements imposed by this and cognate sections of the statute must be strictly complied with, and a failure on the part of the purchaser to give the proper notices to the owner will avoid the deed. *Johnson v. Whilden*, 166 N. C. 104, 81 S. E. 1057.

The purchaser of lands at a sale for taxes without making the affidavit and giving the notice required by this section and Section 2904, has only color of title to the lands under his tax deed. *Fowle v. Whitely*, 166 N. C. 445, 82 S. E. 841.

For additional notes on this section see Supplement 1913.

2904.

The affidavit required by this section is a prerequisite to the validity of the tax deed. *McNair v. Boyd*, 163 N. C. 478, 79 S. E. 966.

For additional notes on this section see Supplement 1913.



**2905.**

Where in an action to set aside a tax deed the issue has been found in the plaintiff's favor, a decree of cancellation upon the payment by the plaintiff of the taxes due to the defendant with the statutory interest, should be made. *McNair v. Boyd*, 163 N. C. 478, 79 S. E. 966.

A tax deed may be executed by an ex-sheriff under Section 950. *McNair v. Boyd*, 163 N. C. 478, 79 S. E. 966.

For a case in which a deed was made to an assignee of a county, prior to the amendment to this section (Laws 1901, Chapter 558, Section 18), see *McNair v. Boyd*, 163 N. C. 478, 79 S. E. 966.

For additional notes on this section see Supplement 1913.

**2909.**

This section does not apply when the tax deed itself is attacked for non-compliance with the prerequisites as to giving notice to the owner and parties in possession before the execution of the deed by the sheriff (Section 2884), and when the evidence is uncontradicted that the lands were bought in by a county and assigned, the assignee thereby acquiring only an equity to foreclose, but not the right to a deed from the sheriff, under the law then in force. *McNair v. Boyd*, 163 N. C. 478, 79 S. E. 966. The sale in this case was of land for 1897 taxes.

For additional notes on this section see Supplement 1913.

**2913.**

For a case in which a tender by owner's agent was held sufficient, see *Green v. Dunn*, 162 N. C. 340, 78 S. E. 211.

**2916.**

For additional notes on this section see Supplement 1913.

10. This subsection held unconstitutional in *Asbury v. Albemarle*, 162 N. C. 247, 78 S. E. 146; *Sewerage Co. v. Monroe*, 162 N. C. 275, 78 S. E. 151.

Referred to in *Bain v. Goldsboro*, 164 N. C. 102, 80 S. E. 256.

**2917.**

For notes on this section see Supplement 1913.

**2918.**

For notes on this section see Supplement 1913.

**2923.**

While a violation of a city ordinance may be negligence *per se*, it is necessary that the plaintiff show that this negligence was the proximate cause of the injury complained of. *Ledbetter v. English*, 166 N. C. 125, 81 S. E. 1066.

In *State v. Darnell*, 166 N. C. 300, 81 S. E. 338, an ordinance of the town of Winston, segregating white and colored persons, passed under authority of a provision of the city charter similar to this section, was held in contravention of the general policy of the State.

As to power to regulate railroads within city limits, see *R. R. v. Goldsboro*, 155 N. C. 356, affirmed 232 U. S. 548.

For additional notes on this section see Supplement 1913.

**2924.**

Amended as to Buncombe County. P. L. L. 1915, c. 9.

It seems that this section authorizes the levy by a city of a tax of

one dollar upon each cow kept by vendors of milk in the city. *Asheville v. Nettles*, 164 N. C. 315, 80 S. E. 236.

For additional notes on this section see Supplement 1913.

**2925.**

For notes on this section see Supplement 1913.

**2928.**

Amended as to Buncombe County. P. L. L. 1915, c. 9.

**2929.**

For notes on this section see Supplement 1913.

**2930.**

A city must keep and maintain its streets in reasonably safe condition, and exercise ordinary care and due diligence to see that they are so kept and maintained; and a charge that "The law requires all cities and towns to keep their streets and sidewalks in safe condition, and on failure to do so, if injury occurs without negligence on the part of the injured party, the city is liable in damages for such injury," is reversible error. *Smith v. Winston*, 162 N. C. 50, 77 S. E. 1093.

In the exercise of the authority given by this section, unless done negligently or maliciously, the municipality is not responsible in damages to the abutting owner for cutting down shade trees on the sidewalk in front of his property. *Munday v. Newton*, 167 N. C. 656, 83 S. E. 695.

An abutting owner on a public street cannot recover damages for the diminution of the value of his property caused by a change in the grade of the street in the absence of any negligence in the construction of the work. *Hoyle v. Hickory*, 164 N. C. 79, 80 S. E. 254; 167 N. C. 619, 83 S. E. 738. For necessity of retaining wall when grade of street is raised, see this case.

The mere fact that the height of the embankment was an inconvenience to the plaintiffs and injured the value of their property was not of itself evidence to support the allegation of negligent construction. *Hoyle v. Hickory*, 164 N. C. 79, 80 S. E. 254; 167 N. C. 619, 83 S. E. 738.

In *Hartsell v. Asheville*, 164 N. C. 193, 80 S. E. 226, it was held that a city ordinance requiring the owners of lots adjoining the street to keep the sidewalks in front of their premises free from ice, snow, etc., and imposing a penalty therefor, did not impose upon the abutting owner any liability for injuries accruing to the plaintiff for a failure to observe the ordinance.

A void assessment is jurisdictional, and can be taken advantage of at any time when the assessment is sought to be enforced. *Charlotte v. Brown*, 165 N. C. 435, 81 S. E. 611.

The town is not held to warrant that the condition of its streets shall be at all times absolutely safe. It is only responsible for a negligent breach of duty, and to establish such responsibility it is not sufficient to show that a defect existed and that an injury has been caused thereby. It must be further shown that the officers of the town knew, or by ordinary diligence might have discovered, the defect, and the character of the defect was such that the injuries to travelers therefrom might reasonably be anticipated. *Alexander v. Statesville*, 165 N. C. 527, 81 S. E. 763.

The city undoubtedly had the right, and it was its duty, if required by the public convenience, to widen, regrade, and otherwise improve



Bell Street, and is not responsible to any one for the manner of doing so, provided its authorities exercised due care in doing the work. *Alexander v. Statesville*, 165 N. C. 527, 81 S. E. 763.

It seems that an assessment upon abutting proprietors for street improvement takes priority over deeds of trust upon the abutting properties, though executed before the levy of the assessment. *Drainage Commissioners v. Farm Association*, 165 N. C. 697, 81 S. E. 947.

In an action to recover damages for the negligent killing of plaintiff's intestate by a defective condition of its electric lighting apparatus for lighting the streets, evidence that previous notice had been given to one of its street laborers will not fix the town with direct knowledge of the defect. *Monds v. Dunn*, 163 N. C. 108, 79 S. E. 303.

A charter requirement that notice to a city must be given within ninety days after the occurrence of an injury for which it is claimed that the city is responsible through its negligence, is a valid one. *Hartsell v. Asheville*, 166 N. C. 633, 82 S. E. 946.

For a case stating facts held sufficient to permit the inference of culpable negligence on the part of a town in the care and supervision of the street, see *Darden v. Plymouth*, 166 N. C. 492, 82 S. E. 829.

In *Seagroves v. Winston*, 167 N. C. 206, 83 S. E. 25, the city was held not responsible for injury caused by a defect which developed less than an hour before the plaintiff fell in.

In *Myers v. Asheville*, 165 N. C. 703, 81 S. E. 1060, the evidence disclosed nothing from which any negligence on the city's part could be inferred, and a motion to non-suit was properly granted.

When an excavation or opening is made in the street or sidewalk of a city with its consent or permission, the city is liable for an injury occurring by reason of the negligence of the person doing the work, and likewise it may be liable for injuries occurring from defects left in the street after the completion of the work and for failure to inspect the work at its termination and ascertain whether it is left in a reasonably safe condition. *Seagroves v. Winston*, 167 N. C. 206, 83 S. E. 251.

For additional notes on this section see Supplement 1913.

2934.

For notes on this section see Supplement 1913.

2939.

For notes on this section see Supplement 1913.

2941.

For notes on this section see Supplement 1913.

2944.

Amended, see Supplement 1913.

2946.

For notes on this section see Supplement 1913.

2949.

Under this section voters at municipal elections must have the same qualifications as are required in general elections, *i. e.*, in elections for State and county. Among these qualifications is the payment of the poll tax. *Echard v. Viele*, 164 N. C. 122, 80 S. E. 408.

For regulations as to registration of voters in general elections, see Section 4318, *et seq.*

**2968.**

For notes on this section see Supplement 1913.

**2970.**

For notes on this section see Supplement 1913.

**2974.**

A bond issue of a city or town for necessary municipal expenses duly authorized by legislative enactment, is not invalid because at the present rate of taxation an insufficient revenue is obtained for a sinking fund and to pay the annual interest. *Gastonia v. Bank*, 165 N. C. 507, 81 S. E. 755.

When a statute authorizes the issuance of bonds for municipal expenses, some of which are and others of which are not necessary within the meaning of this section, without declaring what proportion of the proceeds of the bonds shall be applied to each specific purpose, but leaving that to the discretion of the city authorities, and in the exercise of such discretion they issue bonds for necessary expenses only, the bonds so issued are valid. *Gastonia v. Bank*, 165 N. C. 507, 81 S. E. 755.

The phrase, "majority of the qualified voters therein," means a majority of all the persons who are duly qualified to vote in a given district or township, etc. *Sprague v. Commissioners*, 165 N. C. 603, 81 S. E. 915.

Streets, water works, sewerage, and electric lights are necessary expenses of an incorporated municipality, and a debt may be contracted to pay for them without submitting the proposition to a vote of the electorate. *Gastonia v. Bank*, 165 N. C. 507, 81 S. E. 755; *Bains v. Goldsboro*, 164 N. C. 102, 80 S. E. 256.

A municipal market house is a necessary expense within the meaning of this section. *LeRoy v. Elizabeth City*, 166 N. C. 93, 81 S. E. 1072.

Schools and school buildings are not necessary expenses of a municipal corporation. *Gastonia v. Bank*, 165 N. C. 507, 81 S. E. 755; *Sprague v. Commissioners*, 165 N. C. 603, 81 S. E. 915.

There is no constitutional provision upon the subject in this State, and there is nothing in the charter of the defendant, or in the general legislation of the State, which prohibits the submission as a single proposition for issuing bonds for public improvements. *Briggs v. Raleigh*, 166 N. C. 149, 81 S. E. 1084.

A bond issue for three separate improvements, all of them necessary, may be submitted to the voters as a single proposition. *Briggs v. Raleigh*, 166 N. C. 149, 81 S. E. 1084.

A notice of election reciting that it was published by authority of the board of commissioners and under instructions from them is good, though signed by the city clerk instead of the three city commissioners. *Briggs v. Raleigh*, 166 N. C. 149, 81 S. E. 1084.

For additional notes on this section see Supplement 1913.

**2974a. Any city or town may issue bonds.**

1. For the purpose of securing money for any purpose or purposes involving a necessary expense, including the funding or refunding of obligations theretofore issued for any such purpose, the board of commissioners, council or other governing body of any city or town is hereby authorized to issue bonds of such municipality to such an amount as



said board of commissioners, council or other governing body shall by resolution direct, said bonds to be of such form and tenor and denomination, and to bear interest at such rate not exceeding six per centum per annum, and the principal thereof to be payable at such time or times not exceeding thirty years from the date thereof, and such interest and principal to be payable at such place or places within or without this State as said board of commissioners, council or other governing body shall by resolution direct.

2. In order to secure money for any other municipal purpose or purposes including the funding or refunding of obligations theretofore issued in whole or in part for any other municipal purpose or purposes, such board of commissioners, council or other governing body is hereby authorized to issue bonds of such municipality in all respects as provided in the foregoing section, but before issuing said bonds the question of their issuance shall be submitted to the qualified voters of such municipality at a general or special election, notice of which shall be given by publication at least once a week for four weeks in a newspaper published in said municipality or by posting for thirty days in at least three public places if no newspaper is published therein. Such election shall be held, conducted and canvassed as other elections in said municipality. If a special election be held, the existing registration list shall be used unless a new registration shall be ordered by resolution. If at such election a majority of the registered voters shall vote in favor of the issuance of said bonds, then they shall be issued as aforesaid: *Provided*, that if said bonds are to be issued to fund or refund any notes, bonds or other obligations, the issuance of which shall have been approved by a majority of the qualified voters of such municipality, then no election for the issuance of the funding or refunding bonds shall be necessary.

3. Said bonds shall be numbered and shall be signed by two or more officers to be designated by resolution, including the chief executive officer, under the corporate seal. The delivery of such bonds so executed shall be valid notwithstanding any change in such officers or seal occurring within twenty days after such execution. If coupons be attached to said bonds the coupons may be executed by the facsimile signature of one or more of the officers who sign said bonds, to be designated by resolution. Such coupon bonds may at any time after their issuance be registered by the financial officer of such municipality who shall sign a statement endorsed thereon evidencing the destruction of all unmatured coupons and the registration of such bonds. Such bonds may also be registered as to principal only.

4. Said bonds shall be sold at not less than par and shall bear such a rate of interest not exceeding six per cent, as the governing body of the municipality may determine. They shall be sold at public sale, after advertisement and competitive bidding.

5. No limitation of the taxing power of any municipality issuing bonds under this act shall prevent the levy of a tax sufficient to pay the principal

and interest of such bonds according to their terms: *Provided*, that such special tax shall not exceed twenty cents on the one hundred dollars of property, and sixty cents on the poll. Such municipality may, prior to the issuing of such bonds, or thereafter, provide and pledge a tax in a specific amount to pay the same, and said tax shall thereafter be levied and applied to the payment of such bonds and to no other purpose whatsoever, until the same are fully paid.

6. No bonds shall be issued under section two of this act which, together with all other bonded debt of the municipality shall exceed ten per centum of the assessed valuation of the real and personal property situated in said municipality provided that this prohibition shall not apply to the issuance of funding or refunding bonds.

7. Wherever in this act the word municipality is used it shall be construed to mean the city or town issuing bonds hereunder; wherever the word resolution is used it shall be construed to mean the resolution, ordinance or order of the board of commissioners, council or other governing body of such municipality.

8. This act shall be in addition to any and all other statutes authorizing or permitting the issuance of bonds, and shall not be construed to repeal or supersede any of such statutes. (1915, c. 131. In effect March 8, 1915.)

## 2977.

For notes on this section see Supplement 1913.

## 2977a(1). Local improvements in municipalities; definitions of terms.

In this act the term "municipality" means any city or town in the State of North Carolina now or hereafter incorporated;

"Governing body" includes the board of aldermen, board of commissioners, council, or other chief legislative body of a municipality;

"Street improvement" includes the grading, regrading, paving, repaving, macadamizing and remacadamizing of public streets and alleys, and the construction, re-construction and altering of curbs, gutters and drains in public streets and alleys;

"Sidewalk improvement" includes the grading, construction, re-construction and altering of sidewalks in public streets or alleys, and may include curbing and gutters;

"Local improvement" means any work undertaken under the provisions of this act, the cost of which is to be specially assessed, in whole or in part, upon property abutting directly on the work;

"Frontage" when used in reference to a lot or parcel of land abutting directly on a local improvement, means that side or limit of the lot or parcel of land which abuts directly on the improvement.

## (2). Application of act.

This act shall apply to all municipalities. It shall not, however, repeal any special or local law or affect any proceedings under any special or



local law, for the making of street, sidewalk or other improvements hereby authorized, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and to be a complete act, not subject to any limitation or restriction contained in any other public or private law or laws, except as herein otherwise provided.

**(3). Resolutions, and publications required by act.**

Every resolution passed pursuant to this act shall be passed in the manner prescribed by other laws for the passage of resolutions. Whenever a resolution or notice is required by this act to be published, it shall be published at least once in a newspaper published in the municipality concerned, or, if there be no such newspaper, such resolution or notice shall be posted in three public places in the municipality for at least five days.

**(4). Powers of municipalities as to local improvements.**

Every municipality shall have power, by resolution of its governing body, upon petition made as provided in the next succeeding section, to cause local improvements to be made and to defray the expense of such improvements by local assessment, by general taxation, and by borrowing, as herein provided. No petition shall be necessary, however, for the ordering or making of private water, sewer and gas connections as hereinafter provided. Nor shall a petition be necessary for the making of sidewalk improvements in those municipalities in which by other law or laws sidewalk improvements are authorized to be made without petition.

**(5). Requirements of petitions for local improvements.**

The petition for a local improvement shall be signed by at least a majority in number of the owners, who must represent at least a majority of all the lineal feet of frontage of the lands (a majority in interest of owners of undivided interests in any piece of property to be deemed and treated as one person for the purpose of the petition), abutting upon the street or streets or part of a street or streets proposed to be improved. The petition shall cite this act and shall designate by a general description the local improvement to be undertaken and the street or streets or part thereof whereon the work is to be effected. The petition shall be lodged with the clerk of the municipality, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive.

**(6). Requirements of resolutions for improvements.**

The preliminary resolution determining to make a local improvement shall, after its passage, be published. Such resolution shall designate by a general description the improvement to be made, and the street

or streets or part or parts thereof whereon the work is to be effected, and the proportion of the cost thereof to be assessed upon abutting property and the terms and manner of the payment. If such resolution shall provide for a sidewalk improvement, it may, in those municipalities in which the owners of the abutting property are required to make payment of the entire cost thereof, without petition direct that the owners of the property abutting on the improvement shall make such sidewalk improvement, and that unless the same shall be made by such owners on or before a day specified in the resolution, the governing body may cause such sidewalk improvement to be made. If the resolution shall provide for a street improvement, it shall direct that any street railway company or other railroad company having tracks on the street or streets or part thereof to be improved shall make such street improvement with such material and of such a character as may be approved by the governing body, in that part of such street or streets or part thereof which the governing body may prescribe, not to exceed, however, the space between the tracks, the rails of the tracks, and eighteen inches in width outside of the tracks of such company, and that unless such improvement shall be made on or before a day specified in such resolution, the governing body will cause such improvement to be made: *Provided, however*, that where any such company shall occupy such street or streets under a franchise or contract which otherwise provided, such franchise or contract shall not be affected by this act, except in so far as this act may be consistent with the provisions of such franchise or contract. If the resolution shall provide for a street or sidewalk improvement, it may, but need not, direct that the owners of all property, abutting on the improvement shall connect their several premises with water mains, gas and sewer pipes located in the street adjacent to their several premises in the manner prescribed in such resolution, and that unless such owners shall cause such connection to be made on or before a day specified in such resolution, the governing body will cause the same to be made.

**(7). Character of construction and material.**

The governing body shall have power to determine character and type of construction and of material to be used in making a local improvement, and whether the work, where not done by owners of abutting property or by a street or other railroad company, shall be done by the forces of the municipality or by contract: *Provided*, that for the purposes of securing uniformity in the work the governing body shall always have the power to have all street paving done by the forces of the municipality or by contract under the provisions of this act.

**(8). Assessments for streets and sidewalks on abutting property; assessment on railway companies; lien; water, gas and sewer connections.**

One-half of the total cost of a street or sidewalk improvement made by a municipality, exclusive of so much of the cost as is incurred at



street intersections and the share of railroads of street railways, shall be specially assessed upon the lots and parcels of land abutting directly on the improvements, according to the extent of their respective frontages thereon, by an equal rate per foot of such frontage, unless the petition for such street or sidewalk improvement shall request that a larger proportion of such cost, specified in the petition, be so assessed, in which case such larger proportion shall be so assessed, and the remainder of such cost shall be borne by the municipality at large. The cost of that part of a street improvement required to be borne by a railroad or street railway company, and made by the municipality after default by a railroad or street railway company in making the same, as hereinbefore provided, shall be assessed against such company, and shall be collected in the same manner as assessments are collected from abutting property owners, and such assessment shall be a lien on all of the franchises and property of such railroad or street railway company. The entire cost of a sidewalk improvement required to be made by owners of property abutting thereon, and made by the municipality after default by such property owners in making the same, as hereinbefore provided, shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made and directly on the improvement, according to their respective frontages thereon, by an equal rate per foot of such frontage. The entire cost of each water gas and sewer connection, required to be made by the owner of the property for or in connection with which such connection was made, but made by the municipality after default by such property owner in making the same, as hereinbefore provided, shall be specially assessed against the particular lot or parcel of land for or in connection with which it was made. No lands in the municipality shall be exempt from local assessment.

**(9). Ascertainment and assessment of total cost; assessment roll; hearing of objections; lien of assessments; collection; appeal; powers of governing body.**

Upon the completion of any local improvement the governing body shall compute and ascertain the total cost thereof. In the total cost shall be included the interest paid or to be paid on notes or certificates of indebtedness issued by the municipality to pay the expense of such improvement pursuant to section twelve of this act incident to the improvement and the assessment therefor. The governing body must thereupon make an assessment of said total cost pursuant to the provisions of section eight of this act, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed. Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office

of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of the assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. Any number of assessment rolls may be included in one notice. At the time so appointed, or at some other time to which it may adjourn, for that purpose, the governing body or a committee thereof, must hear the allegations and objections of all persons interested, who appear, and may make proof in relation thereto. The governing body may thereupon correct such assessment roll, and either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for a local improvement the clerk of the municipality shall enter on the minutes of the governing body the date, hour, and minutes of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the roll is confirmed a cop of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes. If a person assessed is dissatisfied with the amount of the said charge he may give notice within ten days after such confirmation that he takes an appeal to the next term of superior court of the county in which said municipality is located, and shall within five days thereafter, serve a statement of facts upon which he bases his appeal, but said appeal shall not delay or stop the said improvements. The said appeal shall at the said term of court be tried as other actions at law. The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a re-assessment. In such case there shall be included as a part of the costs of the public improvement involved, all interest paid or accrued on notes or certificates of indebtedness, or assessment bonds issued by the municipality to pay the expenses of such improvement, and the proceeding shall be in all respects as in cases of local assessment and such re-assessment shall have the same valid and binding force as if it had originally been properly made.

**(10). Payment of assessments; sale for non-payment.**

The property owner or railroad or street railway company hereinbefore mentioned shall have the option and privilege of paying for said improvements hereinbefore provided for in cash, or if they should so



elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in next succeeding section, they shall have the option and privilege of paying said assessments in not less than five nor more than ten equal annual installments as may have been determined by the governing body in the original resolution authorizing such improvement. Said installments shall bear interest at the rate of six per centum per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner or railroad or street railway company to pay said installment when the same shall become due and payable, then and in that event all of said installments remaining unpaid shall at once become due and payable and said property and franchises shall be sold by said municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.

**(11). Notice for payment of assessment; penalties for non-payment; when interest begins.**

After the expiration of twenty days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in said assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of said notice without any addition. In the event said assessment be not paid within said time the same shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll and shall become due and payable on the date on which taxes are payable: *Provided*, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. If any assessment or installment thereof is not paid when due, it shall be subject to the same penalties as are now prescribed for unpaid taxes, in addition to the interest herein provided for.

**(12). Power to borrow money; rate of interest.**

At any time before the cost of any local improvement shall be computed and ascertained as provided in section nine of this act, the governing body may from time to time by resolution authorize the treasurer to borrow money to the extent required to pay the cost of any such improvement or to repay any money borrowed under this section with interest thereon. The resolution authorizing any such loan or loans may provide for the issue of notes or certificates of indebtedness of the municipality, or both, payable either on demand or at a fixed time, not

more than six months from the date thereof and bearing interest not exceeding six per centum per annum. Said notes or certificates may be sold at public or private sale, or pledged as security for temporary loans, as the governing body may by such resolution direct. Any temporary indebtedness incurred under the authority of this section, with the interest thereon, may be paid out of moneys raised by the issue and sale of "local improvement bonds" or "assessment bonds," or both, to be issued and sold as hereinafter provided, or may be included in the annual tax levy.

**(13). Special assessment book; matters to be shown.**

After the governing body of said municipality shall have levied said assessment against the property abutting upon said street or streets, the city clerk or person designated, shall have prepared from such assessment roll and deliver to the tax collector or person designated, a well bound book styled "Special Assessment Book," which shall be so ruled as to conveniently show:

1. Name of owner of such property.
2. The number of lot or part of lot and the plan thereof if there be a plan.
3. The frontage of said lot.
4. The amount that has been assessed against such lot.
5. The amount of such installments and the day on which installments shall become due.

Such book shall be indexed according to the name of the owners of the property and entries of all payments or partial payments shall be immediately entered upon said book when made, and said book shall be open to the inspection of any citizen of the municipality.

**(14). Bonds for cost borne by municipality; tax for interest and sinking fund.**

Whenever an assessment for any local improvement shall have been confirmed, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which shall be borne by the municipality at large shall be raised by the issuance of bonds of the municipality to be known as "Local Improvement Bonds." Such bonds shall be payable at such time or times, not exceeding thirty years from their date, as the governing body shall determine. There shall be raised annually by tax upon all the taxable property of the municipality, after the issuance of any such bonds, a sum sufficient to meet and pay the interest thereon, as the same becomes due and a sum to be paid into a sinking fund which will, together with the accumulations thereof, provide a fund sufficient to meet and pay the principal of said bonds at maturity: *Provided, however,* that if such bonds be made payable in annual installments substantially equal in amount, the first of which installments shall be payable within two years from the date of such



bonds and the last within twenty years of such date, the governing body authorizing such bonds, in lieu of providing for a sinking fund to meet the principal of such bonds, shall cause to be raised by taxation in each year in which an installment of principal shall be payable, or in the next preceding year, an amount sufficient to meet said installment, in addition to the annual tax during the life of the bonds to provide for the payment of the interest accruing thereon. The municipality's share of two or more improvements may be included in a single issue of local improvement bonds.

**(15). Bonds for payment of amounts assessed on lands.**

Whenever an assessment for any local improvement shall have been confirmed, and twenty days shall have elapsed since the first publication of notice of such confirmation, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which shall have been assessed upon the abutting property, or any part of such expense, shall be raised by the municipality by the issuance of its bonds, to be known as "assessment bonds." Such bonds shall be made payable in not less than five and not more than ten substantially equal annual installments, the last of which shall become due not less than five nor more than ten years after the issuance of the bonds. All moneys derived from the collection of assessments upon which assessment bonds are predicated, collected after the passage of the resolution authorizing such bonds, shall be placed in a special fund, to be used only for the payment of the principal and interest of assessment bonds issued under this act; and if at the time of the annual tax levy for any year in such municipality it shall appear that such fund will be for any cause insufficient to meet the principal and interest of such bonds maturing in such year, the amount of the deficiency shall be included in such tax levy. The amount of the assessments for two or more improvements may be included in a single issue of assessment bonds.

**(16). Character of bonds; not to be sold below par.**

Bonds authorized to be issued by this act shall be of such denomination, bear such rate of interest, not exceeding six per centum per annum, and be payable at such places, and be in such form as the governing body may by resolution provide. Such bonds shall be signed by the mayor or other chief executive officer and the clerk of the municipality issuing them, and shall bear the seal of such municipality. Coupons attached to such bonds shall bear the facsimile signature of one or more of said officers. Such bonds may be either coupons bonds or registered bonds, or coupon bonds with the privilege of registration as to principal only, or of conversion into bonds registered as to both principal and interest. They may be sold at public or private sale, but for not less than their par value. They shall recite that they are issued pursuant to the authority of this act and of the resolution authorizing the issuance

thereof which shall be conclusive evidence of their validity, and of the regularity of their issuance.

**(17). Obligation of bonds; levy of taxes therefor.**

The full faith and credit of a municipality shall be pledged for the payment of the principal and interest of all of its local improvement bonds, assessment bonds, notes and other obligations issued under this act. For the purpose of paying such principal and interest the governing body shall have power to levy sufficient taxes upon all the taxable property in the municipality and to borrow money temporarily upon notes of the municipality in anticipation of taxes of the same or the succeeding fiscal year. (1915, c. 56.)

**2977b. Bonds for purchasing sites, erecting building, etc., for school purposes.**

1. Whenever it shall be necessary in the judgment of the board of aldermen or other duly constituted authority of any incorporated town or city in the State, which is in charge of its finances to purchase lands or buildings or to erect additional buildings for school purposes, said board of aldermen or other authority is authorized and empowered to issue for said purposes in the name of said town or city, bonds of such amounts as said board of aldermen or other authority may deem necessary in such denominations and forms as said board of aldermen or other authority may determine: *Provided*, that the time of the payment of the principal of such bonds shall not be more than thirty years from the date thereof: and, *Provided, further*, that said bonds shall be serial bonds, the proportionate parts thereof being payable annually during the term for which they are issued.

2. Said bonds shall bear interest at no greater rate of interest than six per cent per annum, payable semi-annually. In no case shall the bonds be sold, hypothecated or otherwise disposed of for less than their par value.

3. Said bonds shall be signed by the mayor, attested by the town or city clerk or treasurer, and sealed with the corporate seal of said town or city, and shall bear the signature of the town or city clerk and treasurer written, engraved or lithographed. The purchaser of said bonds shall not be bound to see to the application of the purchase money. Said bonds and their coupons shall be exempt from town or city taxation until after they become due, and the coupons shall be receivable in payment of town or city taxes. The said bonds shall be sold at either public or private sale with or without notice, as the said board of aldermen or other authority may determine.

4. The board of aldermen or other proper authority of said towns and cities is hereby authorized to levy and collect each year, in addition to all other taxes in said city, an ad valorem tax upon all the taxable property in said city, sufficient to pay the interest on said school bonds as



the same become due, and also at or before the time when the principal of the said bonds become due, a further uniform ad valorem tax upon all taxable property in said city, sufficient to pay the same or provide for the payment thereof; such taxes shall be levied and collected at the same time and in the same manner as other taxes are levied and collected upon property in said city: *Provided*, that the taxes collected under this act for the payment of said bonds and coupons shall be used for no other purpose and it shall be the duty of the clerk and treasurer of said town or city, as said coupons are paid off and taken up, to cancel the same and report not less than twice a year to the board of aldermen or other proper authority the numbers and amounts of the coupons so cancelled.

5. The question of the issue of said bonds shall be submitted to a vote of the qualified voters of each town or city at such time as the board of aldermen or other proper authority of the town or city shall determine under the rules and regulations prescribed for the election of the mayor and members of the board of aldermen of said city; the said board of aldermen or other authority shall cause a notice of said election and the purpose of same to be published in some newspaper of said town or city for thirty days before said election and the clerk of the superior court of the county in which said town or city is located shall cause to be prepared and distributed at the various polling places in the said town or city a sufficient number of printed ballots favoring the issue of said bonds and a like number against the same; the said board of aldermen or other authority shall cause to be prepared and delivered at each polling place in the said town or city a ballot box indicating the purpose of the bond issue to be voted therein, as follows "School Bonds \$....." (stating the amount authorized by the said board of aldermen or other authority). All qualified voters wishing to vote in favor of the issuing of said bonds and levying the taxes herein provided for, shall vote a written or printed ticket with the words "For School Bonds," and those wishing to vote against issuing said bonds and the levying of the taxes herein provided for shall vote a printed or written ticket with the words thereon "Against School Bonds." If a majority of said qualified voters shall vote "For School Bonds" on the proposition submitted for issuing bonds for the purpose aforesaid, then it shall be deemed and held that the proposition receiving a majority of such qualified votes is favored and approved by the majority of the qualified voters of such town or city, and the said board of aldermen or other authority of such town or city shall cause to be prepared and issued for the purposes so approved of by a majority of the qualified voters of said town or city and levy taxes in accordance with the provisions of this act.

6. The registration for the election shall be, if the said board of aldermen or other authority shall so order, the same as that which is or may be provided for the election of the mayor or other officers of

said town or city, or the said board of aldermen or other authority may, in their discretion, order a new registration in the manner provided by law for new registration for election of said mayor and other officers, which said new registration may be especially for said bond election.

7. This act shall apply to towns or cities which have powers under special acts or charters as well as to those who derive their powers from the general law.

8. This act shall not be deemed or construed to repeal or abridge any powers, rights or privileges heretofore or hereafter granted by any special acts to any town or city, but shall be construed to grant additional powers where no such powers have been granted or coordinate powers where such powers have been already or shall be granted.

9. All laws and clauses of laws in conflict with this act, except as hereinbefore set out, shall be and are hereby repealed. (1915, c. 81.)

**2981. Chief of fire department appointed, how; remuneration.**

It shall be the duty of the board of aldermen or governing body of every city and incorporated city and town where there is no chief of fire department to appoint said officer at once, and to see that said officer is reasonably remunerated by said city or town for the services required of him by law. It shall be the duty of the Insurance Commissioner, where said governing body fails or neglects to perform either of said duties to call it to their attention and if necessary bring the matter before the proper court. Nothing herein shall prevent any person appointed hereunder from holding some other position in the government of said city or town. (1915, c. 192, s. 1.)

For notes on this section see Supplement 1913.

**2982. Chief of fire department, local inspector of buildings; must make reports; local inspectors appointed.**

The chiefs of fire departments hereinbefore provided for shall also be local inspectors of buildings for the cities or towns for which they are appointed and shall perform the duties required herein and shall make all reports required by the insurance commission, and shall make all inspections and perform such duties as may be required by the State law or city or town ordinance or by the said insurance commissioner: *Provided*, however, that any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of fire department shall be relieved of the duties herein imposed. (1915, c. 192, s. 2.)

**2985.**

It is within the valid exercise of the police power of the State for the Legislature to confer authority upon an incorporated town to establish fire limits for the protection of the property of its citizens, wherein houses of wood may not be erected or repaired. *S. v. Lawing*, 164 N. C. 492, 80 S. E. 69.



The courts will not pass upon the reasonableness of fire limits established by an incorporated town under authority conferred by the Legislature, at least where the limits established appear to be reasonable, and without palpable oppression or injustice done. *S. v. Lawing*, 164 N. C. 492, 80 S. E. 69.

A town ordinance creating and regulating a fire district within the town is valid when authorized by statute. *State v. Shannonhouse*, 166 N. C. 241, 80 S. E. 881.

As to repairing wooden buildings in fire districts, see *S. v. Lawing*, 164 N. C. 492, 80 S. E. 69; *State v. Shannonhouse*, 166 N. C. 241, 80 S. E. 881.

### **2986. Building permits required; how obtained; inspections.**

Before a building is begun the owner of the property shall apply to the inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of the building law, a copy of which shall accompany the permit. As the building progresses the inspector shall make as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this law. As soon as the building is completed the owner shall notify the inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with the building law. If the building meets the requirements of the building law the inspector shall then issue to the owner of the building a certificate which shall state that he has complied with the requirements of the building law as to that particular building, giving description and locality and street number if numbered. The inspector shall keep his record so that it will show readily by reference all such buildings as are approved. The inspector shall report to the insurance commissioner every person neglecting to secure such permit and certificate, and also bring the matter before the mayor, recorder or municipal court for their attention and action. (1915, c. 192, s. 3.)

For notes on this section see Supplement 1913.

### **2987. Walls of buildings, how constructed.**

The walls of all buildings in cities or towns where this subchapter applies, other than frame or wooden buildings, shall be constructed of brick, iron or other hard, incombustible material. (1915, c. 192, s. 4.)

### **2987a. Rules applied to repairs and alterations.**

All rules, regulations and requirements contained in the building law, or set out in this subchapter in regard to the erection of buildings, or any part thereof, shall apply also where any building or walls, or any part thereof, is proposed to be raised, altered, repaired or added to, in order that the objects of the law may be accomplished and deficiencies and menaces to the safety of the city or town may not be made or perpetuated. (1915, c. 192, s. 4.)

**2988. Frame buildings not erected in fire limits.**

Within the fire limits of cities and towns where this subchapter applies, as established and defined, no frame or wooden building shall be hereafter erected or altered, repaired or moved except upon the permit of the building inspector, approved by the Insurance Commissioner. (1915, c. 192, s. 5.)

**2989. Thickness of walls.**

The walls of warehouses, stores, factories, livery stables, hotels or other brick or stone buildings for business purposes in cities or towns where this subchapter applies, except fire-proof buildings where the framework is of steel, shall conform to the following schedules:

HEIGHT OF BUILDING.	MINIMUM THICKNESS IN INCHES OF WALL				
	<i>1st</i>	<i>2d</i>	<i>3d</i>	<i>4th</i>	<i>5th</i>
One-story building .....	13	..	..	..	..
Two-story building .....	17	13	..	..	..
Three-story building .....	17	17	13	..	..
Four-story building .....	22	17	17	13	..
Five-story building .....	26	22	17	17	13

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra-cotta, stone, cast-iron or cement. Upon written application approved by the building inspector the Insurance Commissioner may, where he deems it advisable, allow decreased thickness in walls of concrete, or in brick walls where such thickness is compensated for by pilasters. The roof of all buildings named in this section shall be of metal, slate or tile or gravel or other standard fire-proof roofing. (1915, c. 192, s. 6.)

**2991. Metallic stand-pipes on what buildings.**

All business buildings being more than fifty-six feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty feet in height, shall have a four-inch or larger metallic stand-pipe within or near the front wall extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half-inch hose coupling on each floor. The building inspector may, with the approval of the Insurance Commissioner, allow two or more stand-pipes of smaller size and proper hose coupling, provided they are of such sizes and number as to be at least equivalent in service to the large stand-pipes required. All hose coupling



shall conform to the size and pattern adopted by the fire department. (1915, c. 192, s. 7.)

**2996. Hanging flues.**

Hanging flues (that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast iron or fire-clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. All flues shall have a proper and sufficient support at their base, and in no case shall they be supported even partially by contact in passing through partitions, ceilings, or roofs. Flues not lined as above shall be built from the ground eight inches thick of the best hard brick with the joints struck smooth on the inside. (1915, c. 192, s. 8.)

**2998. No stovepipe to pass through wood; penalty for violation of this section.**

No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceiling or partitions shall enter any flue unless such pipe shall be at least twelve inches from such floors, ceiling or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind or other woodwork they shall be guarded by either a double collar of metal with at least three inches air space and holes for ventilation or by a soapstone or burnt-clay ring not less than one inch in thickness extending through the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the inspector, endanger the premises, the inspector shall at once notify in writing the owner or agent of said premises. If such owner or agent fails for a period of forty-eight hours after the service of said notice upon him to make such chimney, flue or heating apparatus safe he shall be liable to a fine of not less than ten dollars nor more than fifty dollars for each day that the condition remains uncorrected. (1915, c. 192, s. 9.)

For notes on this section see Supplement 1913.

**3001.**

For notes on this section see Supplement 1913.

**3002. Quarterly inspection of buildings.**

Once in every three months the local inspector of buildings shall make a personal inspection of every building within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the insurance commissioner and shall report to the insurance commissioner all defects found by him in any building upon a blank furnished him by the insurance commissioner. The said building inspector shall notify the owner or occupant of buildings of any defects, and notify them to correct the same within a reasonable time. (1915, c. 192, s. 10.)

**3003. Annual inspection of buildings.**

At least once in each and every year the local inspector shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this subchapter are complied with, and the local inspector alone or with the insurance commissioner or his deputy shall at all times have the right to enter any dwelling, store or other building and premises to inspect same without molestation from any one. It shall be the duty of the local building inspector to notify the occupant and owner of all premises of any defects found in this general inspection, and see that they are properly corrected. (1915, c. 192, s. 11.)

**3005. Reports of local inspectors.**

The local inspector shall report before the fifteenth of February of each and every year the number and dates of general and quarterly inspections during the year ending the thirty-first day of December upon blanks furnished by the insurance commissioner, and furnish such other information and make such other reports as shall be called for by the insurance commissioner. (1915, c. 192, s. 12.)

**3006. Fees of inspector.**

For every new building, or old building repaired or altered, inspected, the local inspector shall charge and collect an inspection fee before issuing the building certificate as follows: Two dollars for each mercantile store-room, livery-stable or building for manufacturing of one story and fifty cents for each additional story, and for other buildings twenty-five cents per room: *Provided*, the inspection fee shall in no case exceed five dollars. The building inspector shall be paid an adequate salary by the city or town for inspections under section three thousand and two and three thousand and three, also for duties under this section where the fees are collected and paid into the treasury of the municipality. (1915, c. 192, s. 13.)

**3008.**

For notes on this section see Supplement 1913.



**3009. Defects in buildings corrected.**

Whenever the local inspector finds any defects in any new building, or finds that said building is not being constructed, or has not been constructed in accordance with the provisions of this law, or that an old building because of its condition is dangerous and likely to cause a fire, it shall be his duty to notify the owner of said building of the defects or the failure to comply with this law, and the said owner or builder shall immediately remedy the defect and make the said building comply with the law. The owner or builder may appeal from the decision of the local inspector to the insurance commissioner. (1915, c. 192, s. 14.)

The amending act was carelessly drawn and there is some doubt whether it is sufficient to accomplish its purpose. It reads as follows:

"Amend section three thousand and nine of the said Revisal by adding after the words 'new building' in line one and before the words 'it shall be' the words 'or than an old building because of its condition is dangerous and likely to cause a fire.'"

**3010. Unsafe buildings condemned.**

Every building which shall appear to the inspector to be especially dangerous because of its liability to fire, or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. No building now or hereafter built shall be altered, repaired or removed until it has been examined and approved by the inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of the law. (1915, c. 192, s. 15.)

For notes on this section see Supplement 1913.

**3011. To what towns apply.**

This sub-chapter shall apply only to incorporated cities and towns of over one thousand inhabitants according to the last United States census, and such other cities and towns in the State as shall by a vote of their board of aldermen or governing body adopt this sub-chapter. (1915, c. 192, s. 16.)

**3011a(4).**

Cited but not construed in *Kestler v. R. R.*, 164 N. C. 365, 79 S. E. 676.

**3011b. Gas and electric light companies to show readings of meters.**

1. It shall be the duty of all gas companies and electric light companies, selling gas and electricity to the public, to show, among other things, on all statements or bills rendered to consumers, the reading of the meter at the end of the preceding month, and the reading of the meter at the end of the current month and the amount of electricity in kilowatt hours, and of gas, in feet, consumed for the current month.

2. Any such gas or electric light company failing to render bills or

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statements, as provided for in the first section of this act, shall be subject to a penalty of ten dollars for each violation of this act, or failure to render such statements, recoverable before a justice of the peace, by any person suing for the same; but this act shall not apply to bills and accounts rendered customers on flat rates contracts. (1915, c. 259. In effect May 1, 1915.)

**3028a.**

For a discussion of contracts in restraint of trade, see *Faust v. Rohr*, 166 N. C. 187, 81 S. E. 1096.

For additional notes on this section see Supplement 1913.

(5b.) A contract made in violation of the terms of this subsection will not be enforced by the courts of this State. *Fashion Co. v. Grant*, 165 N. C. 453, 81 S. E. 606.

**3028b.**

Repealed, see Supplement 1913.

**3028c.**

Repealed, see Supplement 1913.

**3044a. Lien for storage charges; how sale conducted.**

1. Every person, firm or corporation who shall furnish storage room for furniture, tobacco, goods, wares or merchandise and make a charge for storing the same, shall have the right to retain possession of and a lien upon all furniture, tobacco, goods, wares or merchandise until such storage charges are paid.

2. If such charges are not paid within ten days after they become due then such person, firm or corporation is authorized to sell said furniture, tobacco, goods, wares or merchandise at the county courthouse door, after first advertising such sale for ten days at said courthouse door and three other public places in said county, or in some newspaper published in said county where the goods or tobacco are stored, and out of the proceeds of such sale to pay the costs and expenses of sale and all costs and charges due for storage, and the surplus, if any, pay to the owner of such furniture, tobacco, goods, wares or merchandise. (1913, c. 192; 1915, c. 190.)

**3045.**

For notes on this section see Supplement 1913.

**3047.**

For notes on this section see Supplement 1913.

**3049-3052.**

For notes on these sections see Supplement 1913.

**3057.**

For notes on this section see Supplement 1913.



**3058.**

For notes on this section see Supplement 1913.

**3058b.**

Where a city has created a nuisance to the permanent damage of the lands of a riparian owner of a stream into which city sewage is emptied, the owner may recover such damages, though the city has therein complied with all the regulations of the State Board of Health, under authority conferred upon the latter by statute. *Donnell v. Greensboro*, 164 N. C. 330, 80 S. E. 377.

**3060-3063.**

For notes on these sections see Supplement 1913.

**3066. How many pounds to a bushel; penalty.**

The standard weight of the following seeds and other articles named shall be as stated in this act, viz.:

Apples, green, shall be.....	48 lbs. per bu.
Apples, dried, shall be.....	24 lbs. per bu.
Apple seed shall be .....	40 lbs. per bu.
Barley shall be .....	48 lbs. per bu.
Beans, castor, shall be.....	46 lbs. per bu.
Beans, dry, shall be.....	60 lbs. per bu.
Beans, green in pod, shall be.....	30 lbs. per bu.
Beans, soy, shall be .....	60 lbs. per bu.
Beef, net, shall be .....	200 lbs. per bbl.
Beets shall be .....	50 lbs. per bu.
Blackberries, shall be .....	48 lbs. per bu.
Blackberries, dried, shall be.....	28 lbs. per bu.
Bran shall be .....	20 lbs. per bu.
Broom corn shall be .....	44 lbs. per bu.
Buckwheat shall be .....	50 lbs. per bu.
Cabbage shall be .....	50 lbs. per bu.
Canary seed shall be.....	60 lbs. per bu.
Carrots shall be .....	50 lbs. per bu.
Cherries, with stems, shall be.....	56 lbs. per bu.
Cherries, without stems, shall be.....	64 lbs. per bu.
Clover seed, red and white, shall be.....	60 lbs. per bu.
Clover, burr, shall be .....	8 lbs. per bu.
Clover, German, shall be.....	60 lbs. per bu.
Clover, Japan, Lespedeza, shall be in hull.	25 lbs. per bu.
Alfalfa shall be .....	60 lbs. per bu.
Corn in ear, shucked, shall be .....	70 lbs. per bu.
Corn, shelled, shall be .....	56 lbs. per bu.
Corn, in ear, with shucks, shall be.....	74 lbs. per bu.
Corn, Kaffir, shall be .....	50 lbs. per bu.
Corn, pop, shall be .....	70 lbs. per bu.
Cotton seed shall be .....	30 lbs. per bu.

Cotton seed, Sea Island, shall be.....	44 lbs. per bu.
Cucumbers shall be .....	48 lbs. per bu.
Fish shall be, half barrel.....	100 lbs. per ½ bbl.
Flax seed shall be .....	56 lbs. per bu.
Grapes, with stems, shall be .....	48 lbs. per bu.
Grapes, without stems, shall be .....	60 lbs. per bu.
Gooseberries shall be .....	48 lbs. per bu.
Grass seed, Bermuda, shall be .....	14 lbs. per bu.
Grass seed, Blue, shall be .....	14 lbs. per bu.
Grass seed, Hungarian, shall be.....	48 lbs. per bu.
Grass seed, Johnson, shall be .....	25 lbs per bu.
Grass seed, Italian rye, shall be .....	20 lbs. per bu.
Grass seed, Orchard, shall be .....	14 lbs. per bu.
Grass seed, tall meadow and tall fescue....	24 lbs. per bu.
Grass seed, all meadow and fescue except tall,	14 lbs. per bu.
Grass seed, Perennial Rye, shall be.....	14 lbs. per bu.
Grass seed, Timothy, shall be.....	45 lbs. per bu.
Grass, velvet, shall be .....	7 lbs. per bu.
Grass, redtop, shall be .....	14 lbs. per bu.
Hemp seed shall be .....	44 lbs. per bu.
Hominy shall be .....	62 lbs. per bu.
Horseradish shall be .....	50 lbs. per bu.
Liquids shall be .....	42 gals. per bbl.
Melon, cantaloupe, shall be.....	50 lbs. per bu.
Millet shall be .....	50 lbs. per bu.
Mustard shall be .....	58 lbs. per bu.
Nuts, chestnuts, shall be .....	50 lbs. per bu.
Nuts, hickory, without hulls, shall be.....	50 lbs. per bu.
Nuts, walnuts, without hulls, shall be.....	50 lbs. per bu.
Oats, seed, shall be .....	32 lbs. per bu.
Onions, button sets, shall be .....	32 lbs. per bu.
Onions, top buttons, shall be.....	28 lbs. per bu.
Onions, matured, shall be .....	7 lbs. per bu.
Osage orange seed shall be.....	33 lbs. per bu.
Peaches, matured, shall be .....	50 lbs. per bu.
Peaches, dried, shall be .....	25 lbs. per bu.
Peanuts shall be .....	22 lbs. per bu.
Peach seed shall be .....	50 lbs. per bu.
Peanuts, Spanish, shall be .....	30 lbs. per bu.
Parsnips shall be .....	50 lbs. per bu.
Pears, matured, shall be .....	56 lbs. per bu.
Pears, dried, shall be .....	26 lbs. per bu.
Peas, dry, shall be .....	60 lbs. per bu.
Peas, green, shall be, in hull.....	30 lbs. per bu.
Pie plant shall be .....	50 lbs. per bu.



Plums shall be .....	64 lbs. per bu.
Pork, net, shall be .....	200 lbs. per bbl.
Potatoes, Irish, shall be .....	56 lbs. per bu.
Potatoes, sweet, shall be .....	56 lbs. per bu.
Quinces, matured, shall be .....	48 lbs. per bu.
Raspberries, shall be .....	48 lbs. per bu.
Rice, rough, shall be .....	44 lbs. per bu.
Rye seed shall be .....	56 lbs. per bu.
Sage shall be .....	4 lbs. per bu.
Salads, mustard, spinach, turnips, kale....	10 lbs. per bu.
Salt shall be .....	50 lbs. per bu.
Sorghum seed shall be .....	50 lbs. per bu.
Sorghum molasses shall be .....	12 lbs. per bu.
Strawberries shall be .....	48 lbs. per bu.
Sunflower seed shall be .....	24 lbs. per bu.
Teosinte shall be .....	59 lbs. per bu.
Tomatoes shall be .....	56 lbs. per bu.
Turnips shall be .....	50 lbs. per bu.
Wheat shall be .....	60 lbs. per bu.
Cement shall be .....	80 lbs. per bu.
Charcoal shall be .....	22 lbs. per bu.
Coal, stone, shall be .....	80 lbs. per bu.
Coke shall be .....	40 lbs. per bu.
Hair, plastering, shall be .....	8 lbs. per bu.
Land plaster shall be .....	100 lbs. per bu.
Lime, unslaked, shall be .....	80 lbs. per bu.
Lime, slaked, shall be.....	40 lbs. per bu.

But this section shall not be construed to prevent the purchase and sale by measure.

If any person shall take any greater weight than is specified for any of the items named herein, he shall forfeit and pay the sum of twenty dollars for each separate case to any person who may sue for same. (1909, c. 835; 1915, c. 230.)

### 3072.

Amended, see Supplement 1913.

Hyde County added to list of counties in which the office of Standard Keeper is abolished. (P. L. L. 1915, c. 650).

### 3073.

Amended, see Supplement 1913.

### 3080.

A widow who qualifies as executrix upon the assurance of the executors that further provision would be made for her than that provided by the will, is not, thereby, debarred from entering her dissent upon finding that the additional provision cannot be made. *In re Shuford's Will*, 164 N. C. 133, 80 S. E. 420.

**3082.**

For notes on this section see Supplement 1913.

**3084.**

For notes on this section see Supplement 1913.

**3089.**

The widow of a deceased owner of lands held by him in common with others may have her dower interest therein set apart to her before division of the lands among the heirs at law. *Dudley v. Tyson*, 167 N. C. 67, 82 S. E. 1025.

For additional notes on this section see Supplement 1913.

**3093.**

Amended, see Supplement 1913.

**3095.**

For notes on this section see Supplement 1913.

**3099.**

For notes on this section see Supplement 1913.

**3113.**

The authorities seem to hold that in the trial of an issue of *devisavit vel non*, on caveat duly entered, the proof as to the formal execution of the will shall be made *de novo*, and evidence of such proof before the clerk is insufficient. *Watson v. Hinson*, 162 N. C. 72, 77 S. E. 1089.

A will need not be written entirely on one sheet of paper, but may be written on several sheets, provided the sheets are so connected together that they may be identified as parts of the same will. Physical attachment by mechanical, chemical or other means is not required. *In re Swaim's Will*, 162 N. C. 213, 78 S. E. 72.

In this case the court refused to recognize a letter written by a testator immediately after making a formal will, but making no reference to it, and probated without the notice required by Section 3123, as a codicil to the will. *Spencer v. Spencer*, 163 N. C. 83, 79 S. E. 291.

A codicil must be executed with the same formalities as a will. *Spencer v. Spencer*, 163 N. C. 83, 79 S. E. 291.

It is not required that the witnesses should subscribe to the will in the presence of each other. *Watson v. Hinson*, 162 N. C. 72, 77 S. E. 1089.

It is not always necessary that the testator should sign the will in the presence of the witnesses. *Watson v. Hinson*, 162 N. C. 72, 77 S. E. 1089.

See notes to Section 3127. For additional notes on this section see Supplement 1913.

**3115.**

When an instrument purporting to be a will when first found among the valuable papers of the testator, having previously been in his custody, appears clearly to have been canceled or torn in a material portion which is essential to its entire existence as a will, a presumption arises that this was done by the testator himself, and with intent to revoke, and the burden is on the propounder to explain the act and show that, notwithstanding appearances, the instrument was intended to remain as the will of the alleged testator. *In re Wellborn's Will*, 165 N. C. 636, 81 S. E. 1023.



Where a testator has intentionally erased the name of an executor, who has died, from a paper writing purporting to be his will, and substituted another executor without observing the statutory requirements as to the witnessing, etc., of the paper, the substitution of the executor is inoperative, and without any effect on the instrument, and the result is that the testator died testate, but without naming an executor. *Watson v. Hinson*, 162 N. C. 72, 77 S. E. 1089.

3118.

For notes on this section see Supplement 1913.

3123.

The provisions of this section apply to the production and probate of codicils as much so as to the original will. *Spencer v. Spencer*, 163 N. C. 83, 79 S. E. 291.

For additional notes on this section see Supplement 1913.

3127.

The statute seems to require that, when the will purports to be signed by the testator himself, and only one of the subscribing witnesses is alive and competent, some evidence should be introduced as to the handwriting of the testator or the genuineness of the signature. *Watson v. Hinson*, 162 N. C. 72, 77 S. E. 1089.

When any one of the subscribing witnesses survives, or is competent to testify, proof may be taken of the handwriting, both of the testator and of the other witness, and of such other circumstances as shall satisfy the clerk of the genuineness of such will, and when such testimony is offered on an issue of *devisavit vel non*, it affords evidence from which the will may be established by the jury. *Watson v. Hinson*, 162 N. C. 72, 77 S. E. 1089.

Cited but not construed in *In re Wellborn's Will*, 165 N. C. 636, 81 S. E. 1023.

See notes to Section 3113.

For additional notes on this section see Supplement 1913.

3132.

Amended, see Supplement 1913.

3133.

Cited but not construed in *Watson v. Hinson*, 162 N. C. 72, 77 S. E. 1089.

For additional notes on this section see Supplement 1913.

3135.

When a will has been regularly proven in common form, the right to caveat same may be lost by lapse of time. *In re Dupree's Will*, 163 N. C. 256, 79 S. E. 611.

In this case it was held that the burden of proof should not be shifted to the propounders, when it appeared that the testator signed the will in accordance with the statutory provisions, at the house of a third person, in the presence of disinterested witnesses, and dictated the terms of the will, making an intelligent disposition of his property and stating the reasons therefor. *In re Patrick's Will*, 162 N. C. 519, 77 S. E. 678.

For additional notes on this section see Supplement 1913.

**3136.**

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

Cited but not construed in *In re Dupree's Will*, 163 N. C. 256, 79 S. E. 611.

**3137.**

Where a judgment invalidating a paper writing purporting to be a will has been set aside, for fraud, it leaves the caveat thereto in full force and effect (Revisal, Section 3137) until the issue thus raised is tried and a valid judgment has been rendered; and all proper and necessary parties can be made for a final disposition of the proceedings. *Holt v. Ziglar*, 163 N. C. 390, 79 S. E. 805.

**3138.**

A will probated in common form before the clerk of the Superior Court is conclusively valid until vacated or declared void by a competent tribunal, and may be offered in evidence in proceedings to caveat the will. *Holt v. Ziglar*, 163 N. C. 390, 79 S. E. 805.

Where an estate for life is expressly given and the power of disposition is annexed to it, in such case the fee does not pass. But where there is a gift generally of the estate with the power of disposition annexed, the fee does pass. *Griffin v. Commander*, 163 N. C. 230, 79 S. E. 499.

A devise to testator's wife of real and personal property, "with the power of disposing of the same as she may deem best," with a limitation over to his children of such property as might remain undisposed of at her death, the wife got at least a fee simple, which was defeasible only by her failure to exercise the power. *Mabry v. Brown*, 162 N. C. 217, 78 S. E. 78.

For the terms of a devise held to pass a fee simple, see *Fellowes v. Durfey*, 163 N. C. 305, 79 S. E. 621.

For a will construed in the light of this section, see *Rees v. Williams*, 165 N. C. 201, 81 S. E. 286.

For additional notes on this section see Supplement 1913.

**3139. Valid only after probate; conclusiveness of probate.**

No will shall be effectual to pass real or personal estate, unless it shall have been duly proved and allowed in the probate court of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof, against the heirs and devisees of the testator, whenever the probate thereof, under the like circumstances, would be conclusive against the next of kin and legatees of the testator: *Provided*, that the probate and registration of any last will and testament shall not affect the rights of innocent purchasers for value from the heirs-at-law of the testator when such purchase is made more than two years after the death of such testator, unless the said last will and testament has been fraudulently withheld from probate. (1915, c. 219.)

**3140.**

For notes on this section see Supplement 1913.



3142.

For notes on this section see Supplement 1913.

3143.

For notes on this section see Supplement 1913.

3145.

For notes on this section see Supplement 1913.

3147.

For notes on this section see Supplement 1913.

3152.

That the General Assembly, in the exercise of the police power of the State, was authorized to enact this section, cannot be doubted. *Withers v. Commissioners*, 163 N. C. 341, 79 S. E. 615.

In *Withers v. Commissioners*, 163 N. C. 341, 79 S. E. 615, this section was held to be authority for the payment by the county of the expenses of an analysis of the stomach of a person who had died under suspicious circumstances, made by the order of the Superior Court judge.

3155.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

3158.

The complaint and warrant of arrest should be construed together, and when so construed, and within the jurisdiction of the court issuing them, if an offense has been charged, it is sufficient for the officer to make the arrest, no particular form being required. *State v. Gupton*, 166 N. C. 257, 80 S. E. 989.

For additional notes on this section see Supplement 1913.

3176.

An officer may not make an arrest without a warrant except for offenses committed in his presence, and then he should make known to the offender that he is an officer authorized to make the arrest. *State v. Rogers*, 166 N. C. 388, 81 S. E. 999.

3178.

It is not required that a lawful officer should have a warrant in making an arrest for an assault upon him, for such is not personal to the officer, but an offense against the public. *State v. McClure*, 166 N. C. 321, 81 S. E. 458.

While an officer is not ordinarily permitted to use a firearm in making an arrest for a misdemeanor, the officer was justified in doing so under the circumstances of this case. *State v. McClure*, 166 N. C. 321, 81 S. E. 458.

3193.

For notes on this section see Supplement 1913.

3194.

A voluntary statement made by the defendant, before being sworn, after being cautioned, as required hereby, may be testified to in the Superior Court. *S. v. King*, 162 N. C. 580, 77 S. E. 301.

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A substantial compliance with this statute is sufficient. S. v. King, 162 N. C. 580, 77 S. E. 301.

For additional notes on this section see Supplement 1913.

3205.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

3215.

For notes on this section see Supplement 1913.

3239.

For notes on this section see Supplement 1913.

3242.

Cited but not construed in S. v. Pitt, 166 N. C. 268, 80 S. E. 1060.

3244.

For notes on this section see Supplement 1913.

3246.

For notes on this section see Supplement 1913.

3247.

Cited but not construed in S. v. Hyman, 164 N. C. 411, 79 S. E. 284.  
For additional notes on this section see Supplement 1913.

3248a.

For notes on this section see Supplement 1913.

3249.

For notes on this section see Supplement 1913.

3254.

For bill of indictment under Section 3432 held sufficient, see S. v. Marsh, 162 N. C. 603, 77 S. E. 839.

An indictment charging assault upon "Lila" Hatcher is sustained by proof of an assault upon "Liza" Hatcher. S. v. Drakeford, 162 N. C. 667, 78 S. E. 308.

For additional notes on this section see Supplement 1913.

3254a.

For notes on this section see Supplement 1913.

3255.

For notes on this section see Supplement 1913.

3262.

For notes on this section see Supplement 1913.

3263.

Amended, see Supplement 1913.

Where the jurors objected to have been stood aside, and the jury impaneled before the party appealing has exhausted his peremptory challenges, there is no reversible error on the ground that the jurors selected were not impartial ones. S. v. English, 164 N. C. 497, 80 S. E. 72.

In a murder trial a challenge for incompetency may be sustained



when the juror states that he is opposed to capital punishment, and would not agree to a verdict of guilty. *State v. Vann*, 162 N. C. 534, 77 S. E. 295.

The court may of its own motion discharge a juror if he appears to be disqualified. *State v. Vann*, 162 N. C. 534, 77 S. E. 295.

It is within the sound discretion of the trial judge to allow the solicitor to challenge a juror for cause and stand him aside, after he had once passed the juror, and before the jury was sworn or impaneled; and his action is not reviewable on appeal. *S. v. Burney*, 162 N. C. 613, 77 S. E. 852.

For a case in which jurors were held to be competent, notwithstanding they had formed an opinion about the case from newspaper accounts, see *S. v. English*, 164 N. C. 497, 80 S. E. 72.

For additional notes on this section see Supplement 1913.

**3264.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3265.**

For notes on this section see Supplement 1913.

**3265a.**

This statute nowhere withdraws or proposes to withdraw from a presiding judge the power, in his discretion, to order a mistrial. *State v. Andrews*, 166 N. C. 349, 81 S. E. 416.

For a case non-suited under this section, see *S. v. Isley*, 164 N. C. 491, 79 S. E. 1105.

Applied in *S. v. Moore*, 166 N. C. 371, 81 S. E. 693.

For additional notes on this section see Supplement 1913.

**3268.**

It is proper that the jury should consider the charge in the indictment, and if they fail to find the prisoner guilty as therein charged, then to pass on to the lesser degree of the same offense. *State v. Lance*, 166 N. C. 411, 81 S. E. 1092.

It seems that this section is to be read in connection with Section 3620, and that the assault herein referred to is the assault which is punishable by that section. *State v. Lance*, 166 N. C. 411, 81 S. E. 1092.

For additional notes on this section see Supplement 1913.

**3269.**

Cited but not construed in dissenting opinion of Clark, C. J., in *S. v. Spear*, 164 N. C. at 456, 79 S. E. 869; in dissenting opinion in *S. v. Lance*, 166 N. C. 411, 81 S. E. 1092.

Held applicable to an indictment for committing crime against nature under Section 3349. *S. v. Fenner*, 166 N. C. 247, 80 S. E. 970.

**3271.**

Cited but not construed in *S. v. Lane*, 166 N. C. 333, 81 S. E. 620.

For notes on this section see Supplement 1913.

**3272.**

For notes on this section see Supplement 1913.

**3272b. Trial of persons charged with crime in the uniform of a prisoner or convict or with shaven head prohibited.**

1. It shall be unlawful for any sheriff, jailer or other officer, to require any person imprisoned in jail, to appear in any court for trial, or during trial, dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with shaven or clipped head.

2. No person charged with a criminal offense shall be tried in any court while dressed in the uniform or dress of a prisoner or convict or in any uniform or apparel other than ordinary civilian's dress or with head shaven or clipped by or under the direction and requirement of any sheriff, jailer or other officer, unless such head was shaven or clipped while such person was serving a term of imprisonment for the commission of a crime.

3. Any sheriff, jailer or other officer who shall violate the provisions of this act shall be guilty of a misdemeanor. (1915, c. 124.)

**3273.**

For notes on this section see Supplement 1913.

**3273g. Reclamation and training of juvenile delinquents, youthful violators of the law, their proper custody and the probation system.**

1. This act shall apply to children eighteen years of age and under, except in extreme and criminal cases as is hereinafter provided.

(a). A child shall be known as a juvenile delinquent when he violates any municipal or State law, or when, not being a law violator he is wayward, unruly and misdirected, or when he is disobedient to parents and beyond their control, or whose conduct and environment seem to point to a criminal career.

(b). A child shall be known as a dependent child when, for any reason, he is destitute or homeless or abandoned, and in such an evil environment that he is likely to develop into criminal practices unless he be removed therefrom and properly directed and trained.

2. The recorders' courts, where they have been created, and like courts in other cities where recorders' courts have not been established by law, and also superior courts, shall have jurisdiction in all cases coming within the terms of this act. Any child eighteen years of age, or under, may be arrested, but without imprisonment with hardened criminals and brought before any of these courts to be tried and dealt with as hereinafter prescribed.

When a child has been known to be a repeated offender against the law, incorrigible, and whose freedom in society is thought by the judge adjudicating his case to be a menace to society, may be disposed of according to the discretion of the court.

It shall be the duty of the court, after consultation with proper persons, to appoint either some volunteer or paid probation officer who



shall have charge of the delinquent or dependent children brought before the court.

On the affidavit or oral testimony of any parent, guardian or other person controlling a child, or any other reputable person, who knows the child's condition and needs, the recorder or judge may order such child brought before any of the courts herein given jurisdiction over such children, and declare such child a delinquent child or dependent child, as the case may be, though such child may not be a violator of the law in order that the child may be brought under the beneficent influence of the court, and committed according to the court's discretion.

It shall be the duty of the court, or courts in their discretion, to suspend sentence when the child is found guilty and place him on probation for a specified period, three, six or twelve months, or longer, as the court may think best; and shall require both the probation officer having the moral control of such child remaining under the jurisdiction of the court to appear with the child in question from time to time and at the termination of the probation period fixed by the court, and report as to his progress and general condition. The court may dismiss the case, if satisfied, or place the child again on probation, or commit him to some suitable county or State training school, or a proper private home; when the probation officer appointed by the court has failed to reclaim such child. When the court commits a child to any of the aforementioned institutions, or to any private home or charitable organization, the court shall have the power to modify or reverse such order and recall the child at its discretion, or to place the child, if his physical condition seems to require it, in some hospital or sanatorium where the child can be placed.

3. After the court having jurisdiction of the child or children defined in this act, has seen the necessity of having one or more probation officers to seek to guide and train the child aright, it shall appoint the best person obtainable in the community who is willing to serve in this capacity, and shall suggest to the county commissioners that such probation officer be paid whatever amount is deemed advisable and just by the court, especially when no suitable volunteer probation officer can be secured, and the board of commissioners of any county are hereby empowered in their discretion to make the necessary appropriation to carry this section into effect.

4. It shall be the duty of the court herein given jurisdiction over such children as are described in this act to hold as far as practicable separate trials for the children, and if possible in a private office removed from all criminal features and surroundings, and also to keep and have kept what shall be known as the "Juvenile Record" which shall contain the names, ages, sexes, race, residence, if known, the offenses committed by the child, and his progress or reformation within

the period of the probation fixed by the court, and the final disposition of the child.

5. No court or justice of the peace, or sheriff or arresting officer shall commit to prison and incarcerate any child fourteen years of age, and under, in any jail or prison enclosure where the child will be the companion of older and more hardened criminals, except where the charge is for a capital or other felony, or where the child is a known incorrigible or habitual offender. The court, the sheriff, police officer or probation officer, or other person who shall be responsible for the appearance of the child until his case is disposed of before the court, may place such child in some suitable place or detention home, or in the temporary custody of any responsible person who will give bail or become responsible for his appearance at court.

6. Any parent or guardian, or person controlling or employing any child defined herein who shall knowingly cause or permit such child to become delinquent as hereinbefore defined, shall be guilty of a misdemeanor. (1915, c. 222. In effect March 9, 1915.)

**3274.**

An amendment to a warrant under the "Search and Seizure Act" (Section 2080b) allowing the insertion of the words, "for the purpose of sale," held proper in *S. v. Lee*, 164 N. C. 533, 80 S. E. 405.

For additional notes on this section see Supplement 1913.

**3275.**

For notes on this section see Supplement 1913.

**3276.**

For notes on this section see Supplement 1913.

**3277.**

When an appellant escapes pending his appeal to this court, the court in its discretion will either dismiss the appeal or affirm the judgment or continue the case. *State v. DeVane*, 166 N. C. 281, 81 S. E. 293.

No appellant is entitled to have his case reviewed except by following the method prescribed by law and the rules of the court. *State v. DeVane*, 166 N. C. 281, 81 S. E. 293.

For additional notes on this section see Supplement 1913.

**3278.**

For notes on this section see Supplement 1913.

**3279.**

For notes on this section see Supplement 1913.

**3284-3286.**

For notes on these sections see Supplement 1913.

**3286b.**

Cited but not construed in *S. v. Nipper*, 166 N. C. 272, 81 S. E. 164.



**3291.**

See notes to Section 3615.

For additional notes on this section see Supplement 1913.

**3292.**

This section evidently intends that where there is no aggravation the punishment should approximate the lower limit allowed, and only when aggravation is shown should the highest degree of punishment authorized by the statute be inflicted. Per Clark, C. J., in *State v. Lee*, 166 N. C. 250, 80 S. E. 977.

For additional notes on this section see Supplement 1913.

**3293.**

For notes on this section see Supplement 1913.

**3294.**

For notes on this section see Supplement 1913.

**3297.**

Amended, see Supplement 1913.

**3298a. Burial of hogs dying a natural death.**

1. It shall be the duty of every person, firm or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of the animal.

2. Any person, firm or corporation that shall fail to comply with the terms of this act shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten dollars for each offense, at the discretion of the court. (1915, c. 225.)

**3299.**

For notes on this section see Supplement 1913.

**3305.**

An issue of contributory negligence, when pleaded and supported by evidence, without objection or exception, should be submitted to the consideration of the jury, as to whether such issue could arise in proceedings under the statute. *Quære*. *Holton v. Moore*, 165 N. C. 549, 81 S. E. 779.

If the immediate destruction of the dog is necessary, the owner can be compelled to destroy the dog or subject himself to the possibility of fine and imprisonment, and under such conditions the dog could be destroyed by order of the justice issuing the warrant hereunder. *Beasley v. Byrum*, 163 N. C. 3, 79 S. E. 270.

**3316.**

Amended, see Supplement 1913.

**3316a. Killing, selling or shipping veal.**

(1) It shall be unlawful for any person or persons, firm or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months old, either

dead or alive: *Provided*, that this act shall not apply to persons buying or selling heifer calves to be raised for milk cows, or bull calves for raising purposes or work stock.

(2) Any person, firm, or corporation violating the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars (\$15) nor more than thirty dollars (\$30), or be imprisoned for not less than twenty nor more than thirty days, or both, in the discretion of the court, for each and every offense: *Provided, however*, that this act shall not be construed as prohibiting the killing of bull calves for veal in Alexander County.

(3) This act shall only apply to the following counties: Alamance, Alexander, Ashe, Avery, Burke, Caldwell, Cherokee, Clay, Cleveland, Franklin, Gaston, Graham, Henderson, Lee, Lincoln, Madison, McDowell, Mitchell, Robeson, Rutherford, Sampson, Wake, and Wilson. (Ex. Sess. 1913, c. 80; 1915, cc. 2, 155. P. L. L. 1915, c. 57.)

**3326a. Derogatory statements affecting banks.**

Any person who shall willfully and maliciously make, circulate or transmit to another or others any statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank, savings bank, banking institution or trust company doing business in this State, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or imprisonment in the discretion of the court. (1915, c. 273. In effect March 9, 1915.)

**3333.**

In order to convict under this section, of any of the offenses therein enumerated, it is necessary to show that the breaking was done "with the intent to commit a felony or other infamous crime therein." *State v. Spear*, 164 N. C. 452, 79 S. E. 869.

A verdict that the defendant was guilty of housebreaking with no intent to commit a felony is equivalent to an acquittal, under this section. *S. v. Spear*, 164 N. C. 452, 79 S. E. 869.

For additional notes on this section see Supplement 1913.

**3336.**

For notes on this section see Supplement 1913.

**3338.**

For notes on this section see Supplement 1913.

**3340.**

Amended, see Supplement 1913.

**3346.**

For notes on this section see Supplement 1913.



**3347.**

Amended, see Supplement 1913.

**3349.**

Having carnal knowledge of another by inserting the private parts in the mouth is indictable under this section; and an attempt to commit it is punishable under Section 3269. *S. v. Fenner*, 166 N. C. 247, 80 S. E. 970. For additional notes on this section see Supplement 1913.

**3350.**

For notes on this section see Supplement 1913.

**3351.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3352.**

For notes on this section see Supplement 1913.

**3354.**

For notes on this section see Supplement 1913.

**3355.**

There are two ingredients of this crime—abandonment and failure to provide adequate support for wife and child; and both must be alleged and proved. The abandonment must be willful, that is, without just cause or excuse. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.

Where the wife has consented to a separation from her husband, his leaving her is not an abandonment within the meaning of this section. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.

Where it is not contested that the husband had actually abandoned his wife, on a trial under an indictment for abandonment, the admission of testimony of the sheriff that he could not find the husband to serve his process is immaterial and harmless. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.

Where the act of abandonment and the failure to support are not contested, it is not prejudicial error for the court to admit a part of the defendant's answer forbidden by Revisal, Section 493, in an action for a divorce brought by his wife, to the effect that the husband had sold his property, etc., and had gone to certain places beyond the State. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.

That defendant offered to provide a home for his wife in another town is no defence if it was not genuine or made in bad faith. *S. v. Smith*, 164 N. C. 475, 79 S. E. 979.

In order to convict under this section, it is essential to show a failure of the husband to provide an adequate support for the wife, as well as the act of abandonment. *S. v. Toney*, 162 N. C. 635, 78 S. E. 156.

For additional notes on this section see Supplement 1913.

**3358.**

For action for damages for abduction of child, see *Howell v. Howell*, 162 N. C. 283, 78 S. E. 228.

For additional notes on this section see Supplement 1913.

**3361.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3362.**

Cited but not construed in *McGowan v. Manfg. Co.*, 167 N. C. 192, 82 S. E. 1028.

For provisions on the subject of the employment of children, see Section 1981a, *et seq.*

The second part of this section, which was a part of Ch. 463, Laws 1907, will be found as amended under section number 1981a.

For additional notes on this section see Supplement 1913.

See notes to Section 1981a.

**3363.**

The second part of this section, which was a part of Ch. 463, Laws 1907, will be found as amended under section number 1981a.

**3364.**

The second part of this section, which was a part of Ch. 463, Laws 1907, will be found as amended under section number 1981a.

**3365.**

For notes on this section see Supplement 1913.

**3366.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

Yadkin County added to the list of counties mentioned. P. L. L. 1915, c. 18.

**3367.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

Pamlico added to the list of counties to which this section is applicable. P. L. L. 1915, c. 810.

**3374.**

Amended, see Supplement 1913.

**3374a.**

For notes on this section see Supplement 1913.

**3382.**

The statute cannot avail a defendant where the action is brought to cancel a tax deed in order to remove a cloud on the title of the plaintiffs, who are in possession. *McNair v. Boyd*, 163 N. C. 478, 79 S. E. 966.

For additional notes on this section see Supplement 1913.

**3382a.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3406.**

For notes on this section see Supplement 1913.

**3427.**

Amended, see Supplement 1913.



**3428b. Fraudulent advertising in North Carolina.**

1. It shall be unlawful for any person, firm, corporation or association, with intent to sell or in anywise to dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, to make public, disseminate, circulate, or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading: *Provided*, said advertisement shall be done willfully and with intent to mislead.

2. Any person who shall violate the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1915, c. 218.)

**3431.**

To convict under this section, it is necessary to show a fraudulent intent on the part of the promisor, and merely the facts of obtaining the advances, the promise to do the work and a breach of that promise are insufficient, to sustain a conviction. *S. v. Isley*, 164 N. C. 491, 79 S. E. 1105.

For additional notes on this section see Supplement 1913.

**3432.**

Where the intent to defraud is alleged the use of the word "fraudulently" is not necessary. *S. v. Claudius*, 164 N. C. 521, 80 S. E. 261.

While it is necessary that the indictment show a casual connection between the false representations and the parting with the property, no particular form of words is necessary, and it is sufficient if it is apparent that the delivery of the property was the natural result of the false pretense. *State v. Claudius*, 164 N. C. 521, 80 S. E. 261.

The fact that there is a representation in writing does not prevent the introduction of evidence of a parol representation. *S. v. Claudius*, 164 N. C. 521, 80 S. E. 261.

The word "person" in this section embraces corporations. *State v. Ice Co.*, 166 N. C. 366, 81 S. E. 737.

Under this section it is not necessary to charge an intent to defraud any particular person and such charge is surplusage and immaterial. *State v. Ice Co.*, 166 N. C. 366, 81 S. E. 737.

A coal dealer selling 1,750 pounds for a ton may be convicted under this section though the sale be made to a competitor who suspected that he was making short weight. *State v. Ice Co.*, 166 N. C. 366, 81 S. E. 737.

A railroad agent who falsely represents to his company that it is necessary for him to employ a hand at his station, and who, in order to get the pay, signed the company's check in the name of the sup-

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posed hand, sending it on to a bank for collection, and taking the money from his cash receipt is guilty of false pretense under this section. *S. v. Marsh*, 162 N. C. 603, 77 S. E. 839.

For allegations of a bill held sufficient under this section see *S. v. Marsh*, 162 N. C. 603, 77 S. E. 839.

For a bill of indictment held sufficient under this section, see *S. v. Claudius*, 164 N. C. 521, 80 S. E. 261.

For additional notes on this section see Supplement 1913.

### 3434a.

This section prescribes three classes of offenses:

1. If any person obtains any lodging, food or accommodations at an inn, boarding house, or lodging house, without paying therefor, with intent to defraud the proprietor or manager thereof.

2. Or obtains credit at such an inn, boarding house, or lodging house by the use of any false pretence.

3. Or after obtaining credit or accommodation at an inn, boarding house or lodging house, absconds and surreptitiously removes his baggage therefrom, without paying for his food, accommodation, or lodging. *State v. Hill*, 166 N. C. 298, 81 S. E. 408.

For evidence held sufficient to convict of absconding under this section see *State v. Hill*, 166 N. C. 298, 81 S. E. 408.

### 3434b.

Amended, see Supplement 1913.

### 3434d. Fraudulent marking of packages of fruits and vegetables.

Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package, or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the State of North Carolina, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days: *Provided*, this act shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies, any barrel, crate, box or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193. In effect March 9, 1915.)

### 3434e. Fraudulent wearing or use of the badges, names, titles of officers, insignia, rituals or ceremonies of secret or fraternal organizations and societies.

Any person who fraudulently and willfully wears the badge or button of any secret or fraternal organization or society, either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, or who fraudulently and willfully uses the name of any such order or organization, the titles of its officers,



or its insignia, ritual or ceremonies, unless entitled to wear or use the same under the constitution and by-laws, rules and regulations of such secret or fraternal organization or society, shall be deemed guilty of a misdemeanor, and shall, upon conviction be punished by a fine of fifty dollars or imprisoned for thirty days, in the discretion of the court. (1915, c. 252. In effect March 9, 1915.)

**3444.**

For notes on this section see Supplement 1913.

**3457.**

Amended, see Supplement 1913.

**3466. Killing game out of season.**

If any person shall at any time hunt, capture or kill any nongame bird, or shall during the close season, or time in each year in which the hunting or killing is prohibited, chase with dogs, hunt, kill, or wound, or in any manner take or capture any game bird, or any deer, opossum, rabbit or squirrel, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not exceeding thirty days: Provided, this section shall not apply to birds caught or killed by authority of the Audubon Society for scientific purposes only. This section shall not apply to the English or European housesparrow, owls, hawks, crows, blackbirds, jackdaws, rice birds, turkey buzzards, and vultures. (1915, c. 182.)

**3468.**

The game laws of the State are as varied as there are counties in number; and we have therefore decided to make no attempt to codify them in this biennial.

**3471.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3474.**

For notes on this section see Supplement 1913.

**3478.**

Repealed, see Supplement 1913.

**3480. Without permission.**

If any person shall, without having first obtained permission of the owner, hunt with gun or dogs on the land of another, or if he shall fish or attempt to catch fish from said lands after being forbidden, either personally or by notices written or printed, posted at the courthouse door and at three places on said land, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. In Wake county prosecution can be maintained only upon complaint of the landowner. (1909, c. 620; 1915, c. 271.)

For notes on this section see Supplement 1913.

3481.

Amended, see Supplement 1913.

3484.

For notes on this section see Supplement 1913.

3488.

Amended, see Supplement 1913.

3489.

Amended, see Supplement 1913.

**3491. Agent's compensation, unlawful restriction of.**

It shall be unlawful for any fire insurance company, association or partnership doing business in this state employing an agent who is employed by another fire insurance company, association or partnership, either directly or through any organization or association, to enter into, make or maintain any stipulation or agreement in restraint of or limiting the compensation which said agent may receive from any other fire insurance company, association or partnership, or forbidding or prohibiting reinsurance of the risks of a domestic fire insurance company in whole or in part by any company holding membership in or cooperating with said bureau or board. The penalty for any violation of this section shall be a fine of not less than two hundred and fifty dollars nor more than five hundred dollars and the forfeiture of license to do business in this state for a period of twelve months thereafter. (1915, c. 166, s. 3.)

3494.

This section was enacted as a police regulation to compel the manufacturers of fertilizers to keep their goods to the reputed grade, and its provisions do not and were not intended to interfere with the rights and remedies of parties as stipulated and provided for in their private and personal dealings. *Tomlinson v. Morgan*, 166 N. C. 557, 82 S. E. 953.

3500.

For notes on this section see Supplement 1913.

3505.

Amended, see Supplement 1913.

3506-3508.

For notes on these sections see Supplement 1913.

3509.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

3511.

For notes on this section see Supplement 1913.

3518a.

For notes on this section see Supplement 1913.



**3524.**

A bank or its officer, who accepts, in the usual course of a banking business, money on a draft, with bill of lading for liquors attached, and surrenders the draft to the drawee, by which he is enabled to take the bill of lading to the carrier and get the shipment, is not a dealer within the meaning of this section; nor does it aid and abet the dealer in another state. *S. v. Fisher*, 162 N. C. 550, 77 S. E. 121.

For additional notes on this section see Supplement 1913.

**3525.**

For notes on this section see Supplement 1913.

**3525a. Giving intoxicating drinks to minors.**

If any person shall give intoxicating drinks or liquors to any unmarried minor under the age of seventeen years; or if any person shall aid, assist or abet any person in giving such drinks or liquors to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court: *Provided, however*, that nothing in this act shall prevent any parent or other person standing in *loco parentis* from giving or administering any such drinks or liquors to his minor child for medicinal purposes, nor any physician from giving or administering said drinks or liquors to any minor patient under his care: *Provided, further*, this act shall not apply to the giving or using of wine in the administration of the Sacrament. (1915, c. 82.)

**3527a.**

Cited but not construed in *S. v. Cardwell*, 166 N. C. 309, 81 S. E. 628.

For notes on this section see Supplement 1913.

**3534.**

A delivery of a shipment of liquor to a druggist who has no valid license and whose avowed purpose is to sell the same for profit, is unlawful under this section. *Smith v. Express Co.*, 166 N. C. 155, 82 S. E. 15.

One who, as agent for another, procures liquor in Virginia, where it is lawful to sell it, is not indictable under this section. *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

It is no more unlawful to buy through one's agents than to buy directly himself, and the agent, when he buys lawfully, is just as innocent as his principal would be if he had bought it himself, the real question being whether there was a *bona fide* agency or a sale in disguise. *S. v. Wilkerson*, 164 N. C. 431, 79 S. E. 888.

Cited but not construed in *S. v. Cardwell*, 166 N. C. 309, 81 S. E. 628.

For additional notes on this section see Supplement 1913.

**3559.**

For notes on this section see Supplement 1913.

**3572.**

For notes on this section see Supplement 1913.

**3576.**

For notes on this section see Supplement 1913.

3590.

For notes on this section see Supplement 1913.

3592.

For notes on this section see Supplement 1913.

3610. Town officers; inspection of buildings.

If any chief of any fire department or local inspector of buildings shall fail to perform the duties required of him by law or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor. (1915, c. 192, s. 17.)

3613a.

Amended, see Supplement 1913.

Richmond County added to the list mentioned. P. L. L. 1915, c. 305.

3615.

See notes to Section 3291. For additional notes on this section see Supplement 1913.

3618.

When there is evidence that a capsule given contained a certain drug, it is competent for experts to testify as to the effect of such in producing a miscarriage. State v. Shaft, 166 N. C. 407, 81 S. E. 932.

Testimony as to sexual intercourse with the woman is immaterial and its admission harmless error. State v. Shaft, 166 N. C. 407, 81 S. E. 932.

The victim of the defendant in the latter's effort to produce a miscarriage upon her is not an accomplice in the crime, in a legal sense, whether she consented thereto or not. State v. Shaft, 166 N. C. 407, 81 S. E. 932.

A sentence to the State Prison for three years and the payment of \$1,000 as a fine, is not objectionable as cruel and unusual punishment. State v. Shaft, 166 N. C. 407, 81 S. E. 932.

The offense may be committed by administering any substance with intent to produce an abortion. State v. Shaft, 166 N. C. 407, 81 S. E. 932.

3620.

Amended, see Supplement 1913.

There can be no simple assault when there is an assault by a man or boy over eighteen years old upon a woman. State v. Lance, 166 N. C. 411, 81 S. E. 1092.

For additional notes on this section see Supplement 1913.

3631.

Where the defendant claims that at the time of and immediately before the homicide he had been rendered incapable of forming a deliberate and premeditated purpose to kill by reason of drunkenness, the burden is on him to prove it, not beyond a reasonable doubt, but to the satisfaction of the jury. S. v. Shelton, 164 N. C. 513, 79 S. E. 883.

To make the defense of drunkenness available, the evidence must show that *at the time of the killing* the prisoner's mind and reason were so completely intoxicated and overthrown as to render him utterly incapable of forming a deliberate and premeditated purpose to kill. S. v. Shelton, 164 N. C. 513, 79 S. E. 883.



Where the evidence shows that the purpose to kill was deliberately and premeditatedly formed when sober, the imbibing of intoxicants to whatever extent in order to carry out the designs will not avail as a defense. *S. v. Shelton*, 164 N. C. 513, 79 S. E. 883.

For a discussion of the effect of drunkenness in case of a homicide, see *S. v. English*, 164 N. C. 497, also *S. v. Shelton*, 164 N. C. 513, 79 S. E. 883.

A homicide committed on the perpetration of, or in an attempt to perpetrate a robbery, will be deemed murder in the first degree. *State v. Lane*, 166 N. C. 333, 81 S. E. 620.

Malice will be presumed from the killing of a human being with a deadly weapon, a pistol rendering the offense, nothing else appearing, murder in the second degree at least. *State v. Robertson*, 166 N. C. 356, 81 S. E. 689.

When it appears that the prisoner had made an assault upon A. and was reassaulted so fiercely that he could not retreat without danger to his life, and he kills A., the killing cannot be excused upon the ground of self-defense. *State v. Ray*, 166 N. C. 420, 81 S. E. 1087.

The authorities establish the following propositions:

(1) That one may kill in his defense when necessary to prevent death or great bodily harm.

(2) That he may kill, when not necessary, if he believes it to be so and has reasonable ground for the belief.

(3) That the reasonableness of the belief must be judged by the facts and circumstances as they appeared to the party charged at the time of the killing.

(4) That the jury, and not the party charged, are to determine the reasonableness of the belief.

(5) That if there is any evidence that the party charged has killed under a reasonable belief that he is about to suffer death or great bodily harm, and to prevent it, the plea of self-defense must be submitted to the jury. *State v. Johnson*, 166 N. C. 392, 81 S. E. 941.

The charge of the court upon the law of premeditation, presumption of malice from the killing with a deadly weapon and burden of proof, is approved. *State v. Cameron*, 166 N. C. 379, 81 S. E. 748.

For evidence held sufficient to show premeditation, see *State v. Cameron*, 166 N. C. 379, 81 S. E. 748.

For an extended charge upon the plea of self-defense, see *State v. Ray*, 166 N. C. 420, 81 S. E. 1087.

For an instruction upon the consideration to be given the prisoner's testimony, see *S. v. Fogleman*, 164 N. C. 458, 79 S. E. 879.

For additional notes on this section see Supplement 1913.

### 3632.

For notes on this section see Supplement 1913.

### 3638.

For notes on this section see Supplement 1913.

### 3640.

For notes on this section see Supplement 1913.

### 3646a. Prosecution of violations of Sections 3645, 3646 and 3647.

In case of the violation of any of the provisions of sections three thousand six hundred and forty-five, three thousand six hundred and forty-six and three thousand six hundred and forty-seven, of the Re-

visal of one thousand nine hundred and five, the Attorney-General of the State of North Carolina, upon complaint of the Board of Medical Examiners of the State of North Carolina, shall investigate the charges preferred and, if in his judgment, the law has been violated, he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending person or persons. For his services in conducting such a prosecution the solicitor shall be allowed a fee of five dollars. The Board of Medical Examiners may also employ, at their own expense, special counsel to assist the Attorney-General or the solicitor.

Exclusive original jurisdiction of all actions instituted for the violation of sections three thousand six hundred and forty-five, three thousand six hundred and forty-six, and three thousand six hundred and forty-seven of the Revisal of one thousand nine hundred and five shall be in the superior court, the provisions of any special or local act to the contrary notwithstanding. (1915, c. 220, s. 2.)

**3657.**

Amended, see Supplement 1912.

**3662.**

Amended, see Supplement 1913.

**3663.**

Amended, see Supplement 1913.

**3665.**

For notes on this section see Supplement 1913.

**3670.**

For notes on this section see Supplement 1913.

**3674. Landmarks, altering or removing.**

If any person, firm or corporation shall knowingly remove, alter or deface any landmark in anywise whatsoever, or shall knowingly cause such removal, alteration or defacing to be done, such person, firm or corporation shall be guilty of a misdemeanor. This section shall not apply to such landmarks as creeks and other small streams as the interest of agriculture may require to be altered or turned from their channels nor to such persons, firms or corporations as own the fee simple in the lands on both sides of the lines designated by the landmarks so removed: *Provided*, that this shall not apply to the action of joint owners, who by agreement agree to the removal of such landmarks as they alone are interested in. (1915, c. 248.)

The amending act provides that the act "shall not apply to offenses committed prior to its ratification."

Stakes placed by the agreement of the parties to mark the boundaries between their lands, are landmarks within the meaning of this section. *S. v. Jenkins*, 164 N. C. 527, 80 S. E. 231.



**3686.**

For notes on this section see Supplement 1913.

**3687.**

For notes on this section see Supplement 1913.

**3688.**

For notes on this section see Supplement 1913.

**3689a.**

Amended, see Supplement 1913.

For act applicable to all secret societies, see Sec. 3434e.

**3695. Insane; violation of ordinance of hospital.**

If any person shall violate any ordinance adopted by the board of directors of any state hospital for the insane, or of the North Carolina school for the deaf, or the deaf, dumb and blind, he shall be guilty of a misdemeanor, and upon conviction, shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1915, c. 14.)

**3700.**

Cited but not construed in *S. v. McClure*, 166 N. C. 321 (at page 331), 81 S. E. 458.

**3702.**

A city ordinance making it unlawful for any person to have on his premises a gate that swings out upon a sidewalk of its public streets is valid, and its violation is made a misdemeanor by this section; and, when continuously violated, it may become a nuisance. *Knight v. Foster*, 163 N. C. 329, 79 S. E. 614.

Cited but not construed in *Seaboard Air Line Ry. Co. v. City of Raleigh* (Dis. Ct.), 219 Fed. 573.

**3704.**

For notes on this section see Supplement 1913.

**3706.**

For notes on this section see Supplement 1913.

**3708.**

The mere fact that one who was carrying a pistol in a manner prohibited by this section killed another does not make him guilty of manslaughter unless accompanied by negligence or further wrong, having no necessary tendency to bring about the result. *S. v. Trollinger*, 162 N. C. 619, 77 S. E. 957.

For additional notes on this section see Supplement 1913.

**3712a.**

For notes on this section see Supplement 1913.

**3721.**

Amended, see Supplement 1913.

For notes on this section see Supplement 1913.

**3726.**

For notes on this section see Supplement 1913.

**3731.**

Under the provisions of this section, and Private Laws, 1907, Chapter 1, applicable to the city of Raleigh, the chief of police of that city and his lawful officers or subordinates have the right to prevent or suppress an indecent or immoral show, given in any public place or in any place to which the public are invited, and in the proper discharge of these duties they may act immediately whenever such exhibitions are taking place in their presence or are imminent and their interference is required to prevent them, and in such case they may arrest, without warrant, any and all persons who aid or assist in such plays when, under all the facts and circumstances as they reasonably appear to them, such course is necessary, for the proper and effective performance of their official duty. *Brewer v. Wynne*, 163 N. C. 319, 79 S. E. 629.

**3733. Public drunkenness.**

If any person shall be found drunk or intoxicated on the public highway, or at any public place, or meeting, in the counties of Dare, Graham, Buncombe, Henderson, Jackson, Swain, Catawba, Jones, Ashe, Stanly, Madison, Gaston, Cleveland, Haywood, Macon, Vance, Hyde, Mecklenburg, Yancey, Lincoln, Rutherford or Warren, or in Poplar Branch and Fruitville township, Currituck county, or at Pungo in Beaufort county [or in] Currituck Township, Hyde county, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (1907, cc. 305, 900; 1908, cc. 113, 32; 1909, cc. 256, 815, 843; 1911, P. L. L., c. 320; P. L. L. 1915, cc. 741, 790.)

For notes on this section see Supplement 1913.

**3739.**

For notes on this section see Supplement 1913.

**3739a.**

Repealed, see Supplement 1913.

**3739b.**

Repealed, see Supplement 1913.

**3739c. Certain persons declared vagrants; prosecution.**

1. All keepers and inmates of bawdy-houses, assignation houses, lewd and disorderly houses, and places where illegal sexual intercourse is habitually carried on, are declared to be vagrants within the meaning of section three thousand seven hundred and forty of the Revisal of one thousand nine hundred and five: *Provided*, that nothing herein is intended or shall be construed as abolishing the crime of keeping a bawdy house or disorderly house, or lessening the punishment prescribed by law for such crime. (1907, c. 1012; 1913, c. 75.)

2. It shall be the duty of the chief of police, marshal, constable or other chief ministerial officer of each city and town in this State to furnish to the Police Justice, Recorder, Mayor or other trial officer of such city or town a list of the bawdy, assignation, lewd and



disorderly houses, and places where illegal sexual intercourse is carried on, together with the names of the keepers and inmates of such houses and places, in such city or town, every thirty days, and it shall be the duty of such Police Justice, Recorder, Mayor or other trial officer, upon the filing of such list, to issue his warrant for such persons herein declared to be vagrants, and to punish such persons as may be guilty under this act, as provided in section three thousand seven hundred and forty, Revisal of one thousand nine hundred and five: *Provided*, that in trials under this act any keeper, inmate or employee of the houses or places, or either of them, shall be competent and compellable to give evidence of the character and nature of such house or such place, and the character and acts of the keepers and inmates of such houses and places; but said person so testifying shall not be prosecuted or punished for violation of any law about which crime such person shall have been required to testify. (1907, c. 1012.)

3. If any chief of police, marshal, constable or other chief ministerial officer of any city or town shall fail to furnish the list of houses and places provided for in this act, or shall suppress the name or names of such persons as he is required herein to report, he shall be guilty of a misdemeanor, and upon conviction therefor shall be fined or imprisoned, or both, at the discretion of the Court. (1907, c. 1012.)

### 3740. Vagrancy.

If any person shall come within any of the following classes, he shall be deemed a vagrant, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: *Provided, however*, that this limitation of punishment shall not be binding except in cases of a first offense, and in all other cases such person may be fined or imprisoned, or both, in the discretion of the court.

1. Persons wandering or strolling about in idleness who are able to work and have no property to support them.

2. Persons leading an idle, immoral or profligate life who have no property to support them and who are able to work and do not work.

3. All persons able to work having no property to support them and who have not some visible and known means of a fair, honest and reputable livelihood.

4. Persons having a fixed abode who have no visible property to support them and who live by stealing or by trading in, bartering for or buying stolen property.

5. Professional gamblers living in idleness.

6. All able-bodied men who have no other visible means of support who shall live in idleness upon the wages or earnings of their mother, wife or minor child or children, except male child or children over eighteen years of age. (1915, c. 1.)

For certain persons declared vagrants within the meaning of this section, see Sec. 3739c.

3740a      AMENDMENTS AND NOTES TO REVISAL

The seventh clause of this section as it appears in Pell's Revisal was incorporated herein by the editor of that work. It will be found herein as amended, as Section 3739c.

For additional notes on this section see Supplement 1913.

**3740a.**

Ch. 1012, Laws 1907, of which this section was a part, will be found herein as amended, as section 3739c.

**3740b.**

Ch. 1012, Laws 1907, of which this section was a part, will be found herein as amended, as section 3739c.

**3742. Disorderly conduct in public buildings.**

If any person shall make any rude or riotous noise or be guilty of any disorderly conduct in or near any of the public buildings of the state, or any county or city municipality, or shall write or scribble on, mark, deface, besmear, or injure the walls of any of the public buildings of the state, or any county or city municipality, or any statue or monument, or who shall do or commit any nuisance in or near any public building of the state, or any county or city municipality, he shall be guilty of a misdemeanor. The keeper of the capitol or any person in charge of any of the public buildings shall have authority to arrest summarily and without warrant for a violation of this section. The words "public buildings" as used in this section shall include the grounds around said buildings. (1915, c. 269.)

**3746.**

Amended, see Supplement 1913.

**3749.**

For notes on this section see Supplement 1913.

**3749a.**

For notes on this section see Supplement 1913.

**3753. Failure to construct cattle-guards and crossings.**

If any incorporated company operating any railroad passing through and over the land of any person now enclosed, or which may hereafter become enclosed shall fail, at its own expense, to construct and constantly maintain in good and safe condition, good and sufficient cattle-guards at the points of entrance upon and exit from said enclosed land, or shall fail to make and keep in constant repair crossings to any plantation road thereupon, such corporation shall be guilty of a misdemeanor, and fined in the discretion of the court. *Provided*, that so far as said section relates to cattle guards that the Corporation Commission of North Carolina is hereby authorized, directed and empowered to adopt such good and sufficient make of cattle guard as is now upon the market best suit for turning stock, and when such guard is so selected by said commission, approved and authorized by them, that any railway company operating in this State



which shall procure, install and maintain and keep in good and safe condition on its line of road such guard so selected by said commission, shall be deemed and held in all suits, actions or proceedings in all the courts of this State to have complied with the conditions of this section in installing a good and sufficient cattle guard: *Provided, further*, that any railroad operating in this State may make application to said commission to adopt for such road any particular brand or make of cattle guard, and if said commission shall authorize the use of such guard, and approve the same, then such guard so adopted, kept and maintained in good and sufficient condition at all times for such particular road shall be deemed and held in all actions, suits or proceedings in any court of this State a good and sufficient cattle guard. (1915, c. 127.)

For notes on this section see Supplement 1913.

**3754.**

Amended, see Supplement 1913.

**3754a.**

Repealed, see Supplement 1913. For notes on this section see Supplement 1913.

**3754b.**

Repealed, see Supplement 1913. For notes on this section see Supplement 1913.

**3754c.**

Repealed, see Supplement 1913.

**3763.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3769.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

Brunswick County struck out of this section. P. L. L. 1915, c. 31.

**3773.**

Amended, see Supplement 1913.

**3778.**

For notes on this section see Supplement 1913.

**3779.**

A prosecution for failure to work the public roads is in the nature of a civil judgment, from which an appeal lies on behalf of the prosecutor to the Superior Court. S. v. Bailey, 162 N. C. 583, 77 S. E. 701.

For additional notes on this section see Supplement 1913.

**3793.**

For notes on this section see Supplement 1913.

**3798. Owner of building failing to comply with law.**

If the owner or builder erecting any new building, upon notice from

the local inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, so as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every week during which any defect in the building is wilfully allowed to remain after notice from the inspector shall constitute a separate and distinct offense. (1915, c. 192, s. 18.)

**3801.**

If the company does not comply with this provision, it is evidence of negligence, or a circumstance from which negligence could be inferred by the jury, and if the negligence is found by the jury and was the proximate cause of the intestate's death, it becomes actionable. *Smith v. R. R.*, 162 N. C. 29, 77 S. E. 966; see Section 2616.

**3802. Unsafe buildings allowed to stand.**

If the owner of any building which has been condemned as unsafe and dangerous by any local inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall forfeit and pay a fine of not less than ten nor more than fifty dollars for each day such building continues after such notice. (1915, c. 192, s. 19.)

**3803.**

Amended, see Supplement 1913.

**3805.**

Amended, see Supplement 1913.

**3805a.**

For notes on this section see Supplement 1913.

**3806.**

For notes on this section see Supplement 1913.

**3814.**

For notes on this section see Supplement 1913.

**3816a. Regulating the sale and use of hog cholera serum.**

1. It shall be unlawful for any person, firm or corporation to distribute, sell or use in the State of North Carolina virulent blood from hog cholera infected hogs, or "virus," unless and until they have obtained written permission from the State veterinarian for such distribution, sale or use.

2. Any person, firm or corporation guilty of violating the provisions of this act, or failing or refusing to comply with the requirements hereof, shall be guilty of a misdemeanor and upon conviction fined not less than fifty nor more than one hundred dollars for each offense, and may be imprisoned, in the discretion of the court, not less than ten nor more than thirty days, and shall be liable to any person injured on account



of such violation to the full amount of damages and all costs. (1915, c. 88. In effect March 5, 1915.)

**3822-3825.**

For notes on these sections see Supplement 1913.

**3827.**

For notes on this section see Supplement 1913.

**3836a.**

Repealed, see Supplement 1913.

**3836b.**

Repealed, see Supplement 1913.

**3836e.**

Repealed, see Supplement 1913.

**3839.**

Amended, see Supplement 1913.

**3842.**

For notes on this section see Supplement 1913.

**3844.**

For notes on this section see Supplement 1913.

**3849b. Protection of female telephone operators.**

(1) It shall be unlawful for any person or persons to use any lewd or profane words, or any words of vulgarity, or to use indecent language to any female telephone operator operating any telephone, switchboard, circuit, or line.

(2) Any person violating this act, upon conviction, shall be guilty of a misdemeanor. (1913, c. 35; 1915, c. 41.)

**3862.**

For notes on this section see Supplement 1913.

**3872. Albemarle agricultural association; appropriation.**

Any number of resident persons in each of the following counties, namely, Currituck, Camden, Pasquotank, Perquimans, Gates, Chowan, Washington, Tyrrell, Hyde and Dare, may associate themselves together as provided in this title under the name of The Albemarle Agricultural Association, Incorporated. When such association shall be fully organized, and the organization thereof certified by the president and signed by the secretary, the secretary under the seal of the association shall certify the same to the treasurer of the state, who, if by the certificate it shall appear to him that such association has been duly organized as herein provided, and if it shall be likewise made to appear to him by the certificate of the treasurer of the association, signed by the president, and certified by the secretary under the seal of the association, that the aggre-

gate sum of the amounts herein required of each of such counties has been actually paid to the association by the members thereof, within one year preceding, for the sole benefit of the association, shall, upon warrant of the auditor, pay to the treasurer of such association an equal amount out of the public treasury as above provided for the like sole use and benefit, and such payments shall be annually made by the treasurer of the state on the terms and in the manner herein specified. (P. L. L. 1915, c. 429.)

**3876b. Fairs; lien for concessions; sales therefor; assisting unlawful entrance; tax on outside dealers.**

1. All agricultural fairs which shall grant any privilege, license or concession to any person, persons, firm or corporation for vending wares or merchandise within any fair ground, or which shall rent any ground space for carrying on any kind of business in such fair grounds, either upon stipulated price or for a certain per cent of the receipts taken in by such person, persons, firm or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property to such person, persons firm or corporation, until all charges for privileges, licenses or concessions, are paid or until their contract is fully complied with.

2. Written notice of such sale shall be served on the owner of such goods, wares, merchandise or fixtures, or other property ten days before such sale, if he or it be a resident of the State, but if a non-resident of the state or his or its residence be unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same.

3. It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or pass or in any other way.

4. Any violation of the preceding section of this act shall be a misdemeanor and punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days.

5. Every person, firm, officer or agent of any corporation, who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, ferris wheel, or any other device for public amusement, within one-fourth of a mile of any agricultural fair, during such fair, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as a principal or agent: *Provided*, this section shall not apply to any business established sixty days prior to the beginning of such fair

6. Every such person mentioned in the preceding section shall apply



in advance for a license to the board of county commissioners of the county in which he proposes to peddle sell or operate and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff which shall expire at the end of the twelve months from its date.

7. Any person violating the provisions of the two preceding sections shall be guilty of a misdemeanor punishable by a fine not to exceed fifty dollars or imprisonment not to exceed thirty days at the discretion of the court. (1915, c. 242. In effect March 9, 1915.)

**3876c(1). State Board of Architectural Examination and Registration established; meetings; registration of applicants.**

There shall be a State Board of Architectural Examination and Registration, consisting of five (5) members, to be appointed by the Governor in the following manner, to wit: Within thirty days after this act goes into effect the Governor shall appoint five persons who are reputable architects residing in the State of North Carolina, who have been engaged in the practice of architecture at least ten years. The five persons so appointed by the Governor shall constitute the Board of Architectural Examination and Registration, and they shall be appointed for one, two, three, four, and five years respectively. Thereafter, in each year, the Governor in like manner shall appoint one licensed architect to fill the vacancy caused by the expiration of the term of office, the term of such new members to be for five years. If vacancy shall occur in the Board for any cause, the same shall be filled by the appointment of the Governor.

(a) The said board shall, within thirty days after its appointment by the Governor, meet in the city of Raleigh, at a time and place to be designated by the Governor, and organize by electing a president, vice-president, secretary, and treasurer, each to serve for one year. Said board shall have power to make such by-laws, rules and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The treasurer shall give bond in such sum as the board shall determine, with such security as shall be approved by the board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property which shall come into his hands.

(b) The board shall meet once a year in July of each succeeding year, for the purpose of electing officers and transacting such other business as may properly come before it. Due notice of such annual meeting, and the time and the place thereof, shall be given to each member by letter, sent to his last post office address at least ten days before the meetings, and thirty days notice of such annual meeting shall be given in some newspaper published in the city of Raleigh, at least once a week for four weeks preceding such meeting.

(c) Three members of the board shall constitute a quorum. The

secretary shall keep a record of the proceedings of the board and registration for all applicants for registration and admission to practice architecture, giving the name and location of the institution or place of training where the applicant was prepared for the practice of architecture, and such other information as the board may deem proper and useful. This registration shall be *prima facie* evidence of all matters recorded therein.

**(2). Oath taken, subscribed, and filed.**

Each member of the State Board of Architectural Examination and Registration shall, before entering upon the discharge of the duties of his office, take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said board, and to uphold the Constitution of North Carolina and the Constitution of the United States.

**(3). Examinations; certificates to practice.**

Any person hereafter desiring to be registered and admitted to the practice of architecture in the State shall make a written application for examination to the Board of Architectural Examination and Registration, on a form prescribed by the board, giving his name, age (which shall not be less than twenty-one years), his residence, and such evidence of his qualification and proficiency as may be prescribed by said board, which application shall be accompanied by twenty-five (\$25) dollars. If said application is satisfactory to the board, then he shall be entitled to an examination to determine his qualification. If the result of the examination of any applicant shall be satisfactory to the board, then the board shall issue to the applicant a certificate to practice architecture in North Carolina. Any person failing to pass such examination may be reexamined at any regular meeting of the board without additional fee. Any person who shall by affidavit show that he has made the practice of architecture his sole business or principal means of livelihood previous to the passage of this act, or who shall present a certificate from a similarly constituted board of another state, or any person who is a member of the American Institute of Architects may, upon payment of ten dollars (\$10), be granted certificate and admitted by the said board to practice architecture in the State without examination.

**(4). Acts subject to punishment; non-residents coming within State.**

Any person not registered under this act who shall advertise or put up a sign or card or other device, or in any other way hold himself out to the public as an architect, shall be guilty of a misdemeanor or punished by a fine not exceeding fifty dollars (\$50). *Provided, however,* that nothing herein shall prevent any person from making plans or data for buildings for themselves or other persons, if the person so furnishing such plans or data shall not hold himself out as an architect; and, *Pro-*



*vided, further*, that nothing in this act shall prevent the procuring of plans and specifications from an architect residing outside of this State. That non-resident architects who come within the State to do business shall be subject to the same examination and upon the same terms and conditions as resident applicants, unless such non-resident architects are permitted to engage in business in this State under the terms of section 3, of this act.

**(5). When certificate may be refused; seal of board.**

Said board may refuse to grant certificate to any person convicted of a felony, or who, in the opinion of the board, has been guilty of gross, unprofessional conduct, or who is addicted to habits of such character as to render him unfit to practice architecture. The State Board shall adopt a seal for its own use. The seal shall have the words "Board of Architectural Examination and Registration, State of North Carolina," and the secretary shall have charge, care and custody thereof.

**(6). Payment of fees; salaries and expenses.**

All examination fees shall be paid in advance to the treasurer of said Board of Architectural Examination and Registration. The State of North Carolina shall not be liable for the compensation of any members or officers of said board. All expenses incurred by said board in the necessary discharge of their duties shall be paid out of funds derived from examination fees herein provided for and shall be paid by the treasurer upon warrant drawn by the secretary and approved by the president. The said board shall have the power to determine what are necessary expenses and to fix the salaries to the respective officers.

**(7). Certified architect to have seal.**

Every architect who shall have obtained from said board a certificate, shall have a seal which must contain the name of the architect, his place of business, and the words "Registered Architect, of North Carolina," and he shall stamp all drawings and specifications issued from his office, for use in this State, with an impression of said seal.

**(8). Certificate to be recorded before beginning business; fee of clerk.**

Every person holding a certificate of said board to practice architecture shall have said certificate recorded in the office of the clerk of the superior court of the county in which he resides or has his principal office. Said clerk shall record the same in a book to be kept by him, entitled "Record of Architecture," and the clerk shall be entitled to a fee of one dollar (\$1) for recording such certificate. *Provided, however*, that in any counties where the clerk is on a salary and not on a fee basis, then the said fee of one dollar (\$1) shall be paid into the county treasury. It shall be unlawful for any person to hold himself out as an architect until said certificate shall have been recorded, and any person found guilty of

holding himself out as an architect without registration of his certificate, as aforesaid, shall be guilty of a misdemeanor, and fined not more than fifty dollars (\$50) in the discretion of the court.

**(9). Architecture defined.**

For the purpose of this act, architecture is defined to be the art of designing for the safe and sanitary construction of buildings for public and private use, as taught by the various colleges of architecture recognized by the American Institute of Architects. (1915. c. 270. In effect March 9, 1915.)

**3884.**

For notes on this section see Supplement 1913.

**3890.**

Amended, see Supplement 1913.

**3908a. Incorporation and supervision of land and loan associations.**

1. The term "Land and Loan Associations" shall apply to and include all corporations, companies, societies or associations organized for the purpose of making loans to its members only, and of enabling its members to acquire real estate, make improvements thereon and remove encumbrances therefrom by the payment of money in periodical instalments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, where the principles of building and loan associations and their work are adapted to the use of the farmers and the rural population.

It shall be unlawful for any corporation, company, society, or association doing business in this State not so conducted to use in its corporate name the term "land and loan association," or in any manner or device to hold themselves out to the public as a land and loan association.

2. *How Incorporated; Powers.* Land and loan associations shall be incorporated, supervised, and be subject to such regulations and have such privileges as are prescribed for building and loan associations under the laws of this State as they now are or may be hereafter enacted, except as prescribed in this act.

3. The boards of directors of land and loan associations may contract for loans where on long time (three or more years) and where for at least one per centum less than is charged by the said associations on their loans to shareholders, to the amount of seventy-five per cent of the securities used by them as collateral and, may make short loans to their shareholders on their shares and personal endorsement or personal property.

4. *Reserve Associations.* Associations to be known as "Reserve Land and Loan Associations" may be chartered and licensed as provided in this chapter, when organized and the stock therein held by local land and loan association, and shall have such powers, rights and privileges as



are accorded to other domestic associations, and may conform to such laws, rules and regulations as may be prescribed by the laws of the United States, or of this State, to enable them to receive moneys, bonds or securities to be used in loans and to secure the same. Such reserve associations shall be under the supervision of the Insurance Commissioner as are other associations as set out in chapter eighty-three of the Revisal of one thousand nine hundred and five of North Carolina. (1915, c. 172. In effect March 8, 1915.)

**3913.**

For notes on this section see Supplement 1913.

**3937c. Price of hog cholera serum.**

1. The Department of Agriculture shall fix the price of anti-hog cholera serum at seventy-five cents per hundred cubic centimeters—estimated cost per minimum dose, fifteen cents, to citizens of this State.

2. If it is necessary in order to maintain the price, the Commissioner of Agriculture upon application of the State veterinarian is authorized to draw upon the State Treasurer for such amounts as may be necessary, not exceeding five thousand dollars in any one year. The treasurer shall keep a separate account of all moneys so paid under the title of "Hog Cholera."

3. These warrants shall be marked "Hog Cholera" and upon the approval of the auditor shall be paid by the treasurer out of any money not otherwise appropriated. The commissioner shall render an itemized statement to the Board of Agriculture of all money spent and include a copy of it in his annual statement to the Governor. (1915, c. 152. In effect March 8, 1915.)

**3939.**

Amended, see Supplement 1913.

**3939a. When and how importation of live stock forbidden.**

1. Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of live stock from any State where there is known to prevail contagious or infectious diseases among the live stock of such State.

2. Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any hay, feed stuff or other article dangerous to live stock as a carrier of infectious or contagious disease from any State where there is known to prevail contagious or infectious disease among the live stock of such State.

3. Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the live stock in this State.

4. Any person, firm or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1915, c. 174. In effect March 9, 1915.)

**3942a. Lime for agricultural purposes to be furnished farmers.**

1. The Commissioner of Agriculture is hereby authorized and directed to make such preparations, plans, and arrangements as he may deem best for the purpose of furnishing lime for agricultural purposes to the farmers of North Carolina at the lowest possible cost: *Provided*, that only unburned lime shall be deemed "lime for agricultural purposes."

2. In case the Commissioner of Agriculture shall find it wise and necessary to make arrangements for grinding lime rock, oyster shells, marl, etc., he is hereby directed to purchase or lease any deposits of the aforesaid material that he may deem available, and to charge the farmers and other purchasers, a sufficient price per ton to pay for all operating expenses.

3. With the approval of the Governor, the Superintendent of the Penitentiary shall furnish such a number of able-bodied convicts for the purpose of assisting in the work as the Commissioner of Agriculture shall from time to time demand: *Provided*, that at no time shall the convicts employed exceed fifty in number.

4. For the services of said convicts the Commissioner shall pay the State, quarterly, one dollar and twenty-five cents per day for every day each convict is engaged in actual manual labor.

5. In order to carry out the purposes of this bill there shall be, and is hereby appropriated, the sum of fifteen thousand (\$15,000) dollars; ten thousand (\$10,000) dollars of which to become available on June the first, one thousand nine hundred and fifteen, and five thousand (\$5,000) dollars on June the first, one thousand nine hundred and sixteen, and the whole shall be taken out of the general funds of the Department of Agriculture. (1913, c. 87; 1915, c. 265.)

The title of this act reads "An act to repeal Chapter 87 of the Public Laws of 1913" [this sec.], but there is no repealing clause in the body of the act except of conflicting laws, but as it was evidently intended to supersede the act mentioned the new act is inserted under this number.

**3943.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3943a.**

Repealed, see Supplement 1913.

**3943b.**

Repealed, see Supplement 1913.

**3944(3).**

For notes on this section see Supplement 1913.



**3944b(1).** Superintendent of co-operative associations and credit unions; duties; examination of unions; bureau of information; educational campaign.

There shall be established as a part of the division of markets and rural cooperation, which was established under "the joint committee for agricultural work" (provided in chapter six-eight, Public Laws of one thousand nine hundred and thirteen), [see Gregory's Supplement, Section 3940a], in accordance with an action of the State board of agriculture in June one thousand nine hundred and thirteen, a superintendent of cooperative associations and credit unions, and such assistants as may be necessary, at salaries to be fixed by the "joint committee for agricultural work" of the State board of agriculture and the State College of Agriculture and Mechanic Arts, whose duties shall be as follows:

(a) To organize and conduct in the division of markets and rural cooperation, a bureau of information in regard to cooperative associations and rural credits.

(b) That upon the application of three persons residing in the State of North Carolina, said superintendent shall furnish, without cost such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any cooperative association, or any local credit union in the State of North Carolina.

(c) That it shall be the duty of such superintendent to maintain an educational campaign in the State of North Carolina looking to the promotion and organization of cooperative associations and credit unions, and upon the written request of twelve bona fide residents of any particular locality in North Carolina expressing a desire to form a cooperative association or local credit union at such locality, it shall be the duty of said superintendent, or one of his assistants, to proceed as promptly as convenient to said locality and advise and assist said organizers to establish the institution in question.

(d) That credit unions and cooperative associations formed under this act shall be examined at least once a year and oftener, if such examination be deemed necessary by said superintendent or his assistant, and a report of such examination shall be filed with the division of markets and rural cooperation and a copy thereof mailed to said credit union or cooperative associations at its proper address and to the county clerk of the superior court in which the principal office of said credit union or cooperative association shall be located, and said report shall be kept on file by said clerk of the superior court for public inspection.

## **(2). Incorporation and by-laws.**

Seven or more persons employed or residing in the State of North Carolina, may become a credit union by making, signing, and acknowledging a certificate which shall contain:

## 3944b(2) AMENDMENTS AND NOTES TO REVISAL

First. The name of the proposed credit union, which shall include the words, "Credit Union."

Second. A statement that incorporation is desired under this article.

Third. The conditions, whether of residence, of occupation, or otherwise, which shall qualify persons for membership.

Fourth. The par value of the shares, which shall not exceed twenty-five dollars.

Fifth. The city, village, or town in which its principal business office is to be located. If it is to be located in an incorporated city, the street address of the city shall be given. If the condition of its membership is employment by a certain individual, co-partnership, or corporation, a statement that its office shall be with the said individual, co-partnership, or corporation may be substituted for said street address.

Sixth. The number of its directors, not less than five, all of whom must be members of and shareholders in said corporation.

Seventh. The names and post office addresses of directors for the first year.

Eighth. The names and post office addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation.

At the time of the making of said certificate the incorporators shall adopt by-laws which shall provide:

First. The name of the corporation.

Second. The purposes for which it is formed.

Third. Qualifications for membership.

Fourth. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting said meetings; the number of members which constitute a quorum at said meetings, and regulations as to voting.

Fifth. The number of members of the board of directors; powers and duties, the compensation and duties of officers elected by the board of directors.

Sixth. The number of members of the credit committee; powers and duties.

Seventh. The number of members of the supervisory committee; powers and duties.

Eighth. The par value of the shares of capital stock.

Ninth. The conditions upon which shares may be issued, paid in, transferred, and withdrawn.

Tenth. The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.

Eleventh. The conditions upon which deposits may be received and withdrawn. Whether the proposed corporation shall in addition, have power to borrow funds.

Twelfth. The manner in which the funds of the corporation shall be invested.



Thirteenth. The conditions upon which loans may be made and repaid.

Fourteenth. The maximum rate of interest that may be charged upon loans, not to exceed, however, the legal rate.

Fifteenth. The method of receipting for money paid on account of shares, deposits, or loans.

Sixteenth. The manner in which the reserve fund shall be accumulated.

Seventeenth. The manner in which dividends shall be determined and paid to members.

Eighteenth. The manner in which a voluntary dissolution of the corporation shall be affected.

Said by-laws acknowledged to have been adopted by all of the said incorporators, together with the certificate of incorporation, shall be filed in the office of the superintendent of co-operative associations and credit unions, who shall approve said certificate of incorporation if he is satisfied that it is in conformity with this act and shall approve said by-laws if he is satisfied as to the character of the incorporators and that said by-laws are reasonable and will tend to give assurance that the affairs of said prospective credit union will be administered in accordance with this act. Thereupon, the superintendent of co-operative associations and credit unions shall issue to the said corporation a certificate of approval annexed to a duplicate of said certificate of incorporation and of said by-laws, which certificate of approval together with said attached duplicate certificate of incorporation and duplicate by-laws, acknowledged by all of the incorporators to have been adopted by them, shall be filed in the office of the clerk of the superior court of the county in which the office of such credit union is situated, and upon such filing the said incorporators shall become and be a corporation. The county clerk shall charge the same filing fee for filing said certificate of approval, certificate of incorporation and by-laws, as he is now allowed to charge for filing a certificate of incorporation of a corporation organized under the business corporations law of the State of North Carolina.

### **(3). Amendment to by-laws.**

The by-laws adopted by the incorporators and approved by the superintendent of co-operative associations and credit unions shall be the by-laws of the corporation, and no amendment to said by-laws shall become operative until such amendment shall have been approved by said superintendent of co-operative associations and credit unions, and a copy thereof certified by the superintendent of co-operative associations and credit unions, with a certificate of his approval, shall be filed in the office of the clerk of the superior court of the county where the office of the said credit union is located. Such approval may be given or withheld by the superintendent of co-operative associations and credit unions at his discretion. The county clerks shall receive the same fee for filing as provided in the preceding section.

**(4). Restriction of term "Credit Union."**

The use by any person, co-partnership, association, or corporation except corporations formed under the provisions of this act, of any name or title which contains the two words "credit" and "union," shall be a misdemeanor.

**(5). Powers.**

A credit union may receive the savings of its members in payment for shares or on deposit; may loan to its members at reasonable rates of interest not exceeding the legal rate, or may invest as hereinafter provided the funds so accumulated, and may undertake such other activities relating to the purpose of the corporation as its by-laws may authorize.

**(6). Membership; prohibition against payments for members.**

The membership of the corporation shall consist of those persons who have been duly elected to membership and who have subscribed for one or more shares and have paid for the same in whole or in part, together with the entrance fee as provided in the by-laws, and have complied with such other requirements as the by-laws may contain. No credit union shall ever pay any commission or offer compensation for the securing of members or on the sale of shares.

**(7). Reports; examinations; supervision.**

Corporations organized under the provisions of this act shall be subject to the supervision of the superintendent of co-operative associations and credit unions.

Every corporation organized under this act shall, in January of each year, make a report for the previous calendar year to the superintendent of co-operative associations and credit unions, giving such information as he shall require, which report shall be verified by the oath of the president, treasurer and secretary, as well as by the oath of a majority of the members of the supervisory committee, and it shall make such other and further reports under the like oath as the said superintendent shall demand at any time.

Any such corporation which neglects to make an annual report within the month of January or any of the other reports required by the superintendent of co-operative associations and credit unions at the time fixed by the superintendent shall forfeit to the State five dollars for each day such neglect continues.

The superintendent of co-operative associations and credit unions shall cause every such corporation to be examined once each year and whenever he deems it necessary; and the examiners appointed by him shall be given free access to all books, papers, securities, and other sources of information in respect to said corporation, and for the purpose of such examination the superintendent of co-operative associa-



tions and credit unions shall have power and authority to subpoena and to examine personally, or by any one of his deputies or examiners, witnesses on oath and documents, whether such witnesses are members of the corporation or not, and whether said documents are documents of the corporation or not.

In the event that any such corporation shall neglect to make its annual report as hereinabove provided for more than fifteen days or in the event that any such corporation shall fail to pay such charges as herein required, including the fines for delay in filing reports, the superintendent of co-operative associations and credit unions shall give notice to such corporation of his intention to revoke the certificate of approval of said corporation for said neglect or failure, and if such neglect or failure continues for fifteen days after such notice, then the superintendent of co-operative associations and credit unions shall at his discretion revoke said certificate and he or through one of his deputies shall take possession of the property and business of such corporation and retain such possession until such times as he may permit it to resume business or its affairs be finally liquidated as provided in the banking laws of North Carolina.

In the event it shall appear to the superintendent of co-operative associations and credit unions by any examination or report that any such corporation is insolvent or that it has violated any of the provisions of this act or any other law of the State, he may, by an order made over his hand and official seal, after a hearing or an opportunity for a hearing given the said accused corporation, direct any such corporation to discontinue the illegal methods or practices mentioned in said order to make good any deficit. A deficit, in the discretion of the superintendent of co-operative associations and credit unions, may be made good by an assessment on the members in proportion to the shares held by each member. If any such corporation shall not comply with such order within sixty days after the same shall have been mailed to the last address filed by such corporation in the division of markets and rural co-operation, the superintendent shall thereupon take possession of the property and business of such corporation and retain such possession until such times as he may permit it to resume business or its affairs be finally liquidated, as provided in the banking law of North Carolina.

**(8). Fiscal year and meetings; regulations as to voting.**

The fiscal year of every such corporation shall end at the close of business on the thirty-first day of December. The annual meeting of the corporation shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee, and shall be held upon request in writing of ten per cent of the members. Notice of all meetings of the corporation shall be given in the manner prescribed in the by-laws. At all

meetings of members of shareholders a member shall have one vote and but one vote, irrespective of the number of shares that may be held by him, and in case of sickness or other unavoidable absence of a member he shall be allowed to vote by proxy in writing, but no member present shall vote more than one such proxy. At any meeting the members may decide upon any question of interest to the corporation, and overrule the board of directors, and by a three-fourths vote of those present and represented, provided the notice of the meeting shall have specified the question to be considered, may vote to amend the by-laws.

**(9). Elections of directors and credit committee, etc.**

At the annual meeting the members shall elect a board of directors of not less than five members, a credit committee and a supervisory committee of not less than three members each. However, in credit unions whose business office is located in places other than incorporated cities, the board of directors as such may also be the credit committee. Except as hereinafter specified, no member of said board shall be a member of either of said committees, nor shall one person be a member of more than one of said committees, and all members of committees and all directors, as well as all officers whom they may elect, shall be sworn, and shall hold their several offices for such term as may be determined by the by-laws.

The oath required in this section of each director, officer, and member of committee shall be the oath of the individual taking the same that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the said corporation of at least one share therein. Such oath shall be subscribed by the individual making it and certified by the officer before whom it is taken and shall immediately be transmitted to the superintendent of co-operative associations and credit unions and filed and preserved in his office.

**(10). Directors and officers; compensation.**

At their first meeting and at each first meeting in the fiscal year, the board of directors shall elect from their number a president, vice-president, a secretary, and a treasurer who shall be the executive officers of the corporation. The offices of secretary and treasurer may, if the by-laws so provide, be held by one person. The board of directors shall have the general management of the affairs, funds and records of the corporation, and shall meet as often as may be necessary, unless the by-laws shall specifically reserve all or any of these duties to the members. It shall be the special duty of the directors:

(a) To act upon all applications for membership and the expulsion of members.



(b) To fix the amount of the surety bond which shall be required of each officer having the custody of funds.

(c) To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.

(d) To fix the maximum number of shares which may be held by and the maximum amount which may be lent to any one member; to declare dividends; and to recommend amendments to the by-laws.

(e) To fill vacancies in the board of directors or in the credit committees until the election and qualification of successors.

(f) To have charge of the investment of the funds of the corporation except loans to members, and to perform such other duties as the members may from time to time authorize.

No member of the board of directors or of the credit or supervisory committees shall receive any compensation for his services as a member of said board or committees. But the officers elected by the board of directors may receive such compensation as the members may authorize.

**(11). Credit committee.**

The credit committee shall approve every loan or advance made by the corporation to members. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless it has received the unanimous approval of those members of said committee who were present when it was considered, who shall constitute at least a majority of said committee, nor if any member of said committee shall disapprove thereof; but the applicant for a loan may appeal from the decisions of the credit committee to the board of directors. The credit committee shall meet as often as may be required after due notice has been given to each member.

**(12). Supervisory committee; audit and report.**

The supervisory committee shall inspect the securities, cash and accounts of the corporation and supervise the acts of its board of directors, credit committee, and officers. At any time the supervisory committee, by a unanimous vote, may suspend the credit committee, or any member of the board of directors, or any officer elected by the board and by a majority vote may call a meeting of the shareholders to consider any violation of this act or of the by-laws, or any practice of the corporation which, in the opinion of said committee, is unsafe and unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next regular meeting of the members.

At the close of each fiscal year the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets, and

liabilities of the corporation for the said fiscal year, and shall make a full report thereon to the directors. Said report shall be read at the annual meeting of the members and shall be filed and preserved with the records of the corporation.

**(13). Capital; entrance fee; transfer fee.**

The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on the shares. Shares may be subscribed for and paid in such manner as the by-laws shall prescribe. The credit union shall have a lien on the shares of any member and upon any dividends payable thereon for and to the extent of any loan made to him and of any dues or fines payable by him. The credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares towards the liquidation of the said member's indebtedness.

A credit union may, if the by-laws so provide, charge an entrance fee for each share subscribed, to be paid by the shareholder upon his election to membership.

Fully paid shares of a credit union may be transferred to any person eligible for membership, upon such terms as the by-laws may provide, and the payment of a transfer fee shall not exceed twenty-five cents per share.

**(14). Shares and deposits of minors and in trust.**

Shares may be issued and deposits received in the name of a minor, and such shares and deposits, may, in the discretion of the directors, be withdrawn by such minor or his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. Such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made, or by his legal representatives.

**(15). Fines and penalties.**

For failure by any member of a credit union to meet his payments on shares when due such fines and other penalties may be imposed upon the delinquent members as the by-laws provide. Such fines shall not exceed two per centum per month or a fraction thereof on amounts due, except that a minimum fine of five cents may be imposed.

**(16). Deposits.**

A credit union may receive on deposit the savings of its members and also non-members in such amounts and upon such terms as the board of directors may determine and the by-laws shall provide.



**(17). Power to borrow.**

If the by-laws so provide, a credit union shall have power to borrow money from any source in addition to receiving deposits from its own members but the aggregate amount of such indebtedness at any one time shall not exceed the capital, surplus and reserve fund of a credit union.

**(18). Investment of funds.**

The capital, deposits, undivided profits and reserve fund of the corporation may be invested in one of the following ways, and in such way only:

(a) They may be lent to the members of the corporation in accordance with the provisions of this act.

(b) They may be deposited to the credit of the corporation in savings banks, State banks or trust companies, incorporated under the laws of the State of North Carolina, or in National banks located therein. Funds of credit unions deposited in a savings bank, State bank or trust company which may become insolvent, shall be preferred in the same way that funds of a "savings and loan association" so deposited are preferred under the banking law of the State of North Carolina.

(c) After a credit union shall have been in existence for three fiscal years so much of the reserve fund thereof as shall equal twenty per centum of the total liabilities of the credit union shall be deposited on interest in banks incorporated under the laws of the State of North Carolina, and in the National banks therein.

**(19). Loans.**

A credit union may loan to its members for such purposes and upon such security and terms as the by-laws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of fifty dollars. An endorsed note shall be deemed to be security within the meaning of this section.

A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of in one sum.

No member of the board of directors or of the credit committee or of the supervisory committee shall either directly or indirectly borrow from or become surety for any loan or advance made by the corporation, unless said loans shall have been approved at a regularly called meeting of the members of the corporation by a majority vote of those present and represented at said meeting and the consideration of said loans was mentioned in the call for the meeting.

All officers and members of any committees in any way knowingly permitting or participating in making a loan of funds of a credit union to a non-member thereof shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of such illegal loans

from the borrower or from any officers or members of committees who knowingly committed or participated in the making thereof, or from all of them jointly.

A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.

**(20). Interest rate.**

No corporation organized pursuant to this act shall directly or indirectly charge or receive any interest discount or consideration, other than the entrance fee, greater than the legal rate.

Any corporation, any person, the several officers of any corporation and the members of committees who shall violate the foregoing prohibition shall be guilty of a misdemeanor. The corporation shall also be subject to procedure by the superintendent of co-operative associations and credit unions as prescribed in section seven hereof.

**(21). Reserve fund.**

All entrance fees, transfer fees, and fines shall, after the payment of organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation.

At the close of each fiscal year there shall be set apart to the reserve fund twenty-five per centum of the net income of the corporation which has accumulated during the year. But upon the recommendation of the board of directors the members at an annual meeting may increase, and whenever said funds equal the amount of the capital may decrease, the proportion of profits which is required by this section to be set apart to the reserve fund. Nor shall the reserve fund in any case exceed the capital of the corporation plus fifty per centum of its other liabilities.

The reserve fund shall belong to the corporation and shall be held to meet contingencies, and shall not be distributed to the members except upon the dissolution of the corporation.

**(22). Dividends.**

At the close of the fiscal year a credit union may declare a dividend not to exceed six per cent per annum from the income during the said year and which remains after the deduction of expenses, losses, interest on deposits, and the amount required to be set apart to the reserve fund. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full.

**(23). Expulsion and withdrawal; payments to expelled and withdrawing members.**

The board of directors may expel from the corporation any member who has not carried out his engagement with the corporation, or has



been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this act or of the by-laws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no member shall be expelled until he has been informed in writing of the charges against him and an opportunity has been given him after reasonable notice, to be heard thereon.

A member may withdraw from a credit union by filing a written notice of his intention to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to his shares and any interest accrued on his deposits to the date of expulsion or withdrawal; shall be paid to such member, but in the order of expulsion or withdrawal and only as funds therefor become available, after deducting any amounts due to the corporation by said member. Said member shall have no other or further right in said credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve said member from any remaining liability to the corporation.

#### **(24). Voluntary dissolution.**

At any meeting specially called to consider the subject, four-fifths of the entire membership of the corporation may vote to dissolve the corporation and upon such vote shall signify their consent to such dissolution in writing. Such corporation shall then file in the office of the superintendent of co-operative associations and credit unions such consent, attested by its secretary or treasurer and its president or vice-president, with a statement of the names and residences of the existing board of directors of said corporation and the names and residences of its officers duly verified. The superintendent of co-operative associations and credit unions, upon receipt of satisfactory proof of the solvency of the corporation, shall issue to such corporation, in duplicate, a certificate to the effect that such consent and statement have been filed and that it appears therefrom that such corporation has complied with this section. Such duplicate certificate shall be filed by such corporation in the office of the clerk of the superior court of the county in which said corporation has its place of business, and thereupon such corporation shall be dissolved and shall cease to carry on business except for the purpose of adjusting and winding up its affairs. The said corporation, by its board of directors, shall then proceed to adjust and wind up its business and affairs, with power to carry out its contracts, collect its accounts receivable, and to liquidate its assets and apply the same in discharge of debts and obligations of such corporation, and after paying and adequately providing for the payment of such debts and obligations each share according to the amount paid thereon shall be entitled to its proportion of the balance of the assets. Said corporation shall continue in exist-

ence for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets, and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts and obligations until its business and affairs are fully adjusted and wound up.

**(25). Change of place of business.**

A credit union may change its place of business on the written approval of the superintendent of co-operative associations and credit unions, which written approval shall be filed in the office of said superintendent of co-operative associations and credit unions and a duplicate of said approval in the office of the clerk of the superior court of the county where its office was located and a second duplicate in the office of the clerk of the superior court of the county in which the new office is to be located. Such approval of the superintendent may be given or withheld at his discretion.

**(26). Non-liability of shareholders.**

The shareholders of any such corporation, unless the by-laws so provide shall not be individually liable for the payment of its debts for an amount in excess of the par value of the shares which he owns or for which he has subscribed. The corporation shall be deemed an institution for savings, and together with all accumulations therein shall not be taxable under any law which shall exempt savings banks or institutions for savings from taxation; nor shall any law passed hereafter taxing corporations in any form, or the shares thereof, or the accumulations therein, be deemed to include corporations doing business in pursuance of the provisions of this act, unless they are specifically named in such law. The shares of credit unions being hereby regarded as a system for saving, shall not be subject to any stock-transfer tax either when issued by the corporation or transferred from one member to another. 1915, c. 115. In effect March 6, 1915.)

**3944c(1). Incorporation of co-operative organizations; terms defined.**

Any number of persons, not less than five, may associate themselves as a co-operative association, society, company or exchange, for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical business on the co-operative plan. For the purposes of this act, the words association, company, corporation, exchange, society or union shall be construed to mean the same.

**(2). Articles of agreement; shareholders not personally liable.**

They shall sign and acknowledge written articles which shall contain the name of said association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the



purposes of the association and shall designate the city, town or village where its principal place of business shall be located. Said articles shall also state the amount of authorized capital stock, the number of shares subscribed and the par value of each. No shareholder in any corporation organized under this act shall be personally liable for any debt of the corporation.

### **(3). Filing and recording articles.**

The original articles of incorporation of corporations organized under this act, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the Secretary of State. A like verified copy of such articles and certificates of the Secretary of State, showing the date when such articles were filed with and accepted by the Secretary of State, within thirty days of such filing and acceptance, shall be filed with and recorded by the clerk of the superior court of the county in which the principal place of business of the corporation is to be located, and no corporation shall, until such articles be left for record, have legal existence. The clerk of court shall forthwith transmit to the Secretary of State a certificate stating the time when such copy was recorded. Upon a receipt of such certificate, the Secretary of State shall issue a certificate of incorporation.

### **(4). Filing and recording charges and fees.**

For filing the articles of incorporation of corporations organized under this act, there shall be paid the Secretary of State ten dollars and his fees allowed by law, and for the filing of an amendment to such articles, five dollars and his fees allowed by law: *Provided*, that when the authorized capital stock of such corporations shall be less than one thousand dollars, such fee for filing either the articles of incorporation or amendments thereto shall be two dollars. For recording copy of such articles, the clerk of court shall receive a fee of fifty cents, to be paid by the person presenting such papers for record.

### **(5). By-laws; provisions required.**

At the time of making said articles of incorporation, the incorporators shall make by-laws which shall provide:

- 1st. The name of the corporation.
- 2d. The purposes for which it is formed.
- 3d. Qualifications for membership.
- 4th. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting said meetings; the number of members which shall constitute a quorum at said meetings, and regulations as to voting.

5th. The number of members of the board of directors; powers and duties; the compensation and duties of officers elected by the board of directors.

6th. In the case of selling agencies or productive societies, regulations for grading.

7th. In the case of selling agencies or productive societies, regulations governing the sale of products by the members through the organization.

8th. The par value of the shares of capital stock.

9th. The conditions upon which shares may be issued, paid in, transferred and withdrawn.

10th. The manner in which the reserve fund shall be accumulated.

11th. The manner in which the dividends shall be determined and paid to members.

**(6). Board of directors; officers.**

Every such association shall be managed by a board of not less than five directors. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for time for which elected and until their successors are elected and shall enter upon the discharge of such duties as are prescribed in the by-laws; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director, or officer so removed, shall cease to be a director or officer of said association. The officers of every such association shall be a president, one or more vice-presidents, a secretary and treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.

**(7). Amendment of articles of incorporation.**

The association may amend its articles of incorporation by a majority vote of its shareholders at any regular shareholders' meeting, or any special shareholders' meeting called for that purpose, on ten days' notice to the shareholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: *Provided*, the amount of the capital stock shall not be diminished below the amount of the paid-up capital at the time the amendment is adopted. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the Secretary of State and of the clerk of court of the county where the principal place of business is located.

**(8). Business authorized.**

An association created under this act shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the co-operative plan.



**(9). Limit of shares held; voting; purchase and transfer of stock.**

No shareholder in any such association shall own shares of a greater aggregate par value than twenty per cent of the paid-in capital stock, except as hereinafter provided, or be entitled to more than one vote. A co-operative association shall reserve the rights of purchasing the stock of any member whose stock is for sale and may restrict the transfer of stock to such persons as are made eligible to membership in the by-laws.

**(10). Purchase of business of another association.**

Whenever an association, created under this act, shall purchase the business of another association, person or persons, it may pay for the same in whole or in part by issuing to the selling association or persons shares of its capital stock to an amount which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued.

**(11). Issuance of stock; votes of subscribers.**

Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as shareholders: *Provided*, part of the stock subscribed for has been paid in cash.

**(12). Votes of absent shareholders.**

At any regularly called general or special meeting of the shareholders, a written vote received by mail from any absent shareholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of such of the shareholders so signing: *Provided*, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. In case of sickness or other unavoidable absence of a member, he shall be allowed to vote by proxy in writing; but no member shall vote more than one such proxy.

**(13). Apportionment of earnings.**

The directors, subject to revision by the association at any general or special meeting, shall apportion the earnings by first paying dividends on the paid-up capital stock, not exceeding six per cent per annum, then setting aside not less than ten per cent of the net profits for a reserve fund, until an amount has been accumulated in said reserve fund equal to thirty per cent of the paid-up capital stock, and not less than two per cent thereof for an educational fund to be used in teaching co-operation, and the remainder of said net profits by uniform dividend upon the amount of purchases of shareholders and upon the wages and salaries of employees, and one-half of such uniform dividend to non-shareholders on the amount of their purchase, which may be credited to

the account of such non-shareholders on account of capital stock of the association; but in selling agencies such as fruit, truck, peanuts and cotton growers' associations, and in productive associations such as creameries, canneries, warehouses, factories and the like, dividends shall be pro-rated on raw materials delivered instead of on goods purchased. In case the association is both a selling and productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

**(14). Distribution of dividends.**

The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months.

**(15). Annual reports.**

Every association organized under the provisions of this act shall annually, on or before the first day of March of each year, make a report to the Secretary of State; such report shall contain the name of the company, its principal place of business in this State, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of shareholders, total expenses of operation, amount of indebtedness or liabilities, and its profits and losses. A copy of such report shall also be filed with the division of markets and rural organization conducted by the "Joint Committee for Agricultural Work" (provided for in chapter sixty-eight, Public Laws of one thousand nine hundred and thirteen) of the State Board of Agriculture and the State College of Agriculture and Mechanic Arts.

**(16). Associations heretofore organized.**

All co-operative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business shall have the benefit of all of the provisions of this act, and be bound thereby on filing with the Secretary of State a written declaration, signed and sworn to by the president and secretary to the effect that said co-operative company or association has by a majority vote of its shareholders decided to accept the benefits of and to be bound by the provisions of this act. No association organized under this act shall be required to do or perform anything not specifically required herein, in order to become a corporation.

**(17). Subject to general corporation law.**

All co-operative associations shall be maintained in accordance with the general corporation law, except as otherwise provided for in this act.

**(18). Use of term "co-operative" by other associations.**

No corporation or association hereinafter organized for doing business



for profit in this State shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this act; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any shareholders of any association legally organized under this act. (1915, c. 144. In effect March 8, 1915.)

**3945.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3946.**

Amended, see Supplement 1913.

**3948.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3949.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3951.**

Amended, see Supplement 1913.

**3955.**

For notes on this section see Supplement 1913.

**3956.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3957.**

For notes on this section see Supplement 1913.

**3958.**

For notes on this section see Supplement 1913.

**3960.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3961b.**

For notes on this section see Supplement 1913.

**3962-3965.**

For notes on these sections see Supplement 1913.

**3967.**

For notes on this section see Supplement 1913.

**3968.**

For notes on this section see Supplement 1913.

**3968a. Standard weight packages of meal and flour; sale in short weight packages prohibited.**

3. It shall be unlawful for any person or persons to pack for sale, sell or offer for sale in this state flour, except in packages containing by standard weight twelve pounds, twenty-four pounds, forty-eight pounds, ninety-eight pounds or one hundred and ninety-six pounds of flour, with the weight plainly stated on the outside of the package: *Provided*, that sections one and two of the act shall not apply to the retailing of meal or flour direct to customers. *Provided, further*, that sections one and two of this act shall not apply to the packing or selling of meal or flour in packages containing less than one-eighth of a bushel. (1909, c. 555; 1911, c. 145; 1915, c. 10.)

For remainder of this act see this section number in Gregory's Supplement.

**3970. "Food" and "misbranded" defined.**

The term "food," as used in this subchapter, shall include all articles used for food, candy, condiments or drink, by man or domestic animals, whether simple, mixed or compound. The term "misbranded," as used therein, shall include all articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement purporting to name any ingredients or substances as being contained or not being contained in such article, which statement shall be false in any particular.

Sec. 7, Ch. 368, Laws 1907, a part of which was incorporated into this section by the editor of Pell's Revisal, will be found herein, as amended, as Sec. 3970b (7), and this section as it appears in the Revisal of 1905 is here reprinted for the convenience of the profession.

**3970a.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**3970b.**

For additional notes on this section see Supplement 1913.

6. The act of 1913, Chapter 136, amending Section 3444 as to the use of saccharine, expressly provides that this sub-section "be and the same is hereby restored and to have full force and effect."

**(7). Misbranded defined; application of term.**

The term "misbranded" as used herein shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substance contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory or country in which it is manufactured or produced.

That for the purpose of this act an article shall also be deemed to be misbranded:



In the case of drugs:

First. If it be an imitation of, or offered for sale under the name of, another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaïne, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein: *Provided*, that this shall not apply to prescriptions of regularly licensed physicians, dentists and veterinary surgeons, United States Pharmacopœa and National Formulary preparations.

In the case of food:

First. If it be an imitation of, or offered for sale under the distinctive name of, another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaïne, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein. That all cans, jars or other packages containing canned meats intended for food, shall have printed on the label thereof the correct date on which said food product was canned or put into said package, as provided in the National Pure Food Law.

Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count so as to comply with the regulations on labeling prescribed by the board of agriculture, provided for by section ten, chapter three hundred and sixty-eight of the Public Laws of one thousand nine hundred and seven. The Board of Agriculture is hereby authorized to establish rules and regulations permitting reasonable variations when in their judgment exactness is impractical: *Provided*, that the provisions of this paragraph shall not apply to articles in packages or containers when the retail price of such article is six cents or less: and, *Provided, further*, that it shall not apply to products on hand at the time of the passage of this act until after January first, one thousand nine hundred and sixteen.

Fourth. If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular: *Provided*, that an article of food which

does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of, or offered for sale under the distinctive name of, another article, if the name be accompanied on the same label or brand with a statement of the place and where said article has been manufactured or produced.

Second. In the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, the labeling is according to the rules prescribed by the Board of Agriculture: *Provided*, that the term "blend," as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *and provided further*, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding. (1907, c. 368, s. 7; 1915, c. 154.)

### 3971.

Sec. 7, Ch. 368, Laws 1907, a part of which was incorporated into this section by the editor of Pell's Revisal, will be found herein, as amended, as Sec. 3970b(7).

### 3972.

For notes on this section see Supplement 1913.

### 3977.

Sec. 7, Ch. 368, Laws 1907, a part of which was incorporated into this section by the editor of Pell's Revisal, will be found herein, as amended, as Sec. 3970b(7).

### 3977c. Regulating the sale of artificially bleached flour, and to prevent fraudulent sale of same.

1. For the purpose of protecting the people of the State from imposition by the fraudulent sale of artificially bleached flour as pure high grade flour, the Board of Agriculture shall cause inspections to be made from time to time, and samples of flour offered for sale in the State obtained, and shall cause the same to be analyzed or examined by the State food chemist or other experts of the department of agriculture for the purpose of ascertaining or determining, if same has been artificially bleached or sold in violation of this act. The Board of Agriculture is hereby authorized to make such publication of the results of the examination, analyses and so forth, as they may deem proper.



2. The food inspectors of the Department of Agriculture shall have authority, during business hours, to enter all stores, warehouses and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same.

3. If it shall appear from such inspection or examination or both than any of the provisions of this act have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination.

4. Flour artificially bleached with nitrogen peroxide or chlorine or any other agent when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel or other package, in letters not smaller than five-eighths of an inch in size the legend: "Artificially Bleached."

5. Before any artificially bleached flour shall be offered for sale in this State the manufacturer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such.

6. For the purpose of defraying expenses incurred in the enforcing of the provisions of this act, for each and every separate brand of artificially bleached flour registered and before being offered for sale in the State, the manufacturer, dealer, or agent registering same shall pay to the Commissioner of Agriculture an inspection fee of twenty-five dollars during the month of July, one thousand nine hundred and fifteen, and during the month of January in each succeeding year, or before such flour is offered for sale in the State, said fees to be used by the board and Commissioner of Agriculture for executing the provisions of this act.

7. Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in section four of this act, or who shall violate any of the provisions of the act shall be guilty of a misdemeanor, and for such offense, upon conviction of same shall be fined not to exceed fifty dollars for the first offense and for each subsequent offense not to exceed one hundred dollars, or be imprisoned not to exceed six months, or both in the discretion of the court, and the flour offered for sale in violation of this act shall be subject to seizure, condemnation and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation and sale of commercial fertilizers: and the proceeds thereof if sold, less the legal cost and charges, shall be paid into treasury for use in executing the provisions of this act: *Provided*, that the Commissioner of Agriculture

may in his discretion, for the first offense, order the release of the flour seized when the owner of same shall have complied with the requirements of the provisions of this act, and it shall appear to the commissioner that said owner did not intend to violate the law: *Provided*, said owner of flour defray expenses incurred by the Department of Agriculture in seizure of same.

8. Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price furnish a sample of flour as demanded, to any person duly authorized by the Board of Commissioners to secure same, and who shall apply for such sample, and any manufacturer or dealer who refuses to comply, upon demand, with the requirements of section eight of this act, or any person who shall willfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the performance of his duty in connection with this act, shall be guilty of a misdemeanor and upon conviction be fined not less than ten dollars and not more than one hundred dollars, or be imprisoned, in the discretion of the court.

9. The provisions of this act shall not apply to flour and sacks on hand at the passage of the act.

10. All laws in conflict with this act are hereby repealed.

11. Except as provided in section nine, this act shall be in force from and after July the first, one thousand nine hundred and fifteen. (1915, c. 278.)

**3979.**

Amended, see Supplement 1913.

**3980.**

Amended, see Supplement 1913.

**3981.**

Amended, see Supplement 1913.

**3982.**

Amended, see Supplement 1913.

**3982c. Penalty for failure to make report.**

Any warehouse failing to make the report as required by section two [Pell's Revisal, Sec. 3982a], shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed, one dollar to be paid to the department of agriculture for expense of advertising. (1907, c. 97, s. 4; 1911, c. 14; 1915, c. 31.)

See Section 3982d.

**3982d. Publication of names of delinquents; commissioner's certificate as evidence.**

The Commissioner shall on the twelfth day of each month publish in



some newspaper the names of the tobacco warehouses that have failed to comply with this act. The certificate of the Commissioner under seal of the department shall be admissible as evidence the same as if it were his deposition taken in form as provided by law. (1915, c. 31.)

### **3982e. Cotton grades established.**

1. The standards or grades of cotton established or which may be hereafter established by the Secretary of Agriculture by virtue of acts of Congress, shall be recognized as the standards in transactions by and between citizens of this State in transactions relating to cotton.

2. The Commissioner of Agriculture shall obtain from the Secretary of Agriculture a duplicate of each of these samples as represent cotton produced in this State for the use of the citizens of the State who may desire to use them in settlement of any disputed transaction. (1915, c. 23. In effect February 11, 1915.)

### **3982f. Cotton grades established; expert cotton graders employed; evidence of grades.**

1. The North Carolina Department of Agriculture and the North Carolina College of Agriculture and Mechanic Arts, acting together as provided by chapter sixty-eight of the Public Laws of one thousand nine hundred and thirteen, or separately, shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as they may adopt.

The above institutions may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this act.

2. Any board of commissioners of any county in North Carolina is authorized and empowered to co-operate with either, or both, of the above named institutions in aid of the purposes of this act; and they shall have authority to appropriate such sums of money as the said board shall deem wise and expedient.

3. The expert graders, employed by either of the above named institutions, or by the United States Government, shall have full right, power and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify agreeable to and in accordance with the standards, or grades, of cotton which is now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be *prima facie* proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State.

4. In the event of any dispute, or trial, pending in any of the courts of this State, the certificate of any expert grader, employed as above provided and acknowledged, or proven, before any clerk of the superior

court of any county in the State, shall be admissible in evidence as to the grade, or classification, of cotton graded or classified by said expert. (1915, c. 175. In effect March 9, 1915.)

**3983.**

For notes on this section see Supplement 1913.

**3993.**

For notes on this section see Supplement 1913.

**3995.**

For notes on this section see Supplement 1913.

**4009.**

Can the State Board sell lands at a less price than 12½ cents per acre? *Weston v. Lumber Co.*, 163 N. C. 78, 79 S. E. 431.

**4017.**

Amended, see Supplement 1913.

**4018a.**

1. Both the act of 1909, Chapter 442, and of 1911, Chapter 67, are constitutional. *Shelton v. White*, 163 N. C. 90, 79 S. E. 427. *In re Big Cold Water Drainage District*, 162 N. C. 127, 78 S. E. 14.

In *Drainage Commissioners v. Farm Association*, 165 N. C. 697, 81 S. E. 947, it was held that a smaller district might be established within a larger one, there being no conflict between the two districts, and the purposes of the smaller district being ancillary to the larger district.

For a summary of the procedure in the formation of districts under this act see *Shelton v. White*, 163 N. C. 90, 79 S. E. 427.

For additional notes on this section see Supplement 1913.

Amended as to *Grant's Creek Drainage District*, Rowan County, P. L. L. 1915, c. 687; as to *Rowan County and water shed of Back Creek*, Iredell County, P. L. L. 1915, c. 385.

**(2). Assessment of damages claimed by land owners.**

It shall be the further duty of the engineer and viewers to assess the damages claimed by the owners of any land located in such proposed drainage district, and to embrace in such assessment the value of any land actually taken and the injury done to any land not taken, including damage to the growing crops and timber located thereon, as well as all inconveniences suffered by such landowners, on account of such proposed drainage or other improvements. Such damages, when assessed and ascertained, shall be considered separate and apart from any benefits such land might receive because of the proposed improvements, and shall be included in the total cost of such improvements, and collected in the manner provided for the collection of other moneys to defray the costs of said improvements under the provisions of this act, and when so collected shall be paid by the board of drainage commissioners to the person or persons entitled thereto. (1909, c. 442, s. 2; 1911, c. 67, s. 1; 1915, c. 238, s. 1.)



The amending act strikes out the former Section 2 and substitutes the above.

The effect of the amendment appears to be far reaching. The initial and basic machinery appears to have been eliminated, leaving the remainder of the act suspended in mid-air without any foundation to rest upon.

**(2a). Payment of drainage engineer; provisions as to repayment.**

(Repealed, 1915, c. 235.)

5. Cited but not construed in *Shelton v. White*, 163 N. C. 90, 79 S. E. 427.

6. Though the clerk fails to find as a fact that the lands described were "wet, swamp, or overflowed lands, or lands covered by water, or that the drainage of the lands described would benefit the public health or be conducive to the public welfare," but finds that the allegations set out in the petition are true, and those allegations are clearly made in the petition, it seems that this is sufficient. *In re Drainage District*, 162 N. C. 127, 78 S. E. 14.

See note to subsection 16.

8. On an appeal under this subsection, it would not seem that any land owner who has signed the petition should be allowed, contrary to the averments in the petition to object and appeal. *Shelton v. White*, 163 N. C. 90, 79 S. E. 427.

A minority land owner cannot contest the practicability of the formation of the district which is based upon the petition of the majority of the land owners and approved by the report of the viewers and surveyor and affirmed by the clerk. He can only raise the issue of fact whether his own lands will be benefited. *Shelton v. White*, 163 N. C. 90, 79 S. E. 427.

15. Where it appears that no newspaper is published in the county and there is no evidence of finding that one published elsewhere has a general circulation there, a failure to publish a notice in a newspaper as required by this section is not fatal to the validity of bonds issued under this act. *Commissioners v. Engineering Co.*, 165 N. C. 37, 80 S. E. 897.

Parties who, in an endeavor to aid the drainage commissioners to establish the validity of bonds issued under this act, file a paper in the proceeding acknowledging that they had actual notice of the time and place of hearing the final report, will thereafter be estopped to question the validity of the bonds. *Commissioners v. Engineering Co.*, 165 N. C. 37, 80 S. E. 897.

**(16). Adjudication; final report.**

At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, in the manner provided in section eleven hereof, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue

to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs: *Provided*, that the state geological and economic survey may remit and release to the petitioners the costs expended by said board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized. (1909, c. 442, s. 16; 1915, c. 238.)

The amending act provides that the amendment shall not affect any pending proceedings.

From the final report one who signed the petition may find that contrary to his previous opinion the cost of the improvements and damages will amount to more than the benefits accruing, and he should then be entitled to ask that his land be omitted from the district and for an issue of fact as to whether he will be benefited. *Shelton v. White*, 163 N. C. 90, 79 S. E. 427.

If the jury find in the objector's favor, his lands may be excluded from the district if this can be done without injury thereto; if not, then they may be included for the purpose of a right of way for the proposed improvements, the objector recovering damages therefor. *Shelton v. White*, 163 N. C. 90, 79 S. E. 427.

Notwithstanding the jury finds that "the cost of construction together with the amount of damages assessed, would be greater than the resulting benefit that would accrue" to defendant's lands the judge may include such lands in the district for the purpose of giving a right of way for the proposed improvements over his lands under subsection 6 of this section, if the formation of the district required such action, the objectors recovering damages. *Parks v. Johnson*, 163 N. C. 74, 79 S. E. 430.

17. When the jury was instructed to consider "not only the increased facilities of the land for producing crops, but the benefit to the health of the people who live in the district," the charge will not be held erroneous because other parts, taken singly, did not appear to confine the question of health to those living in the proposed district. *In re Drainage District*, 162 N. C. 127, 78 S. E. 14.

Under this section an exception not made before the clerk is not a matter for consideration on appeal. *In re Drainage District*, 162 N. C. 127, 78 S. E. 14.

It is not open to any objector appealing under this section to contest the formation of a district, which is backed by a majority of the land owners. He can only raise the issue of fact whether he will be benefited or not. *Shelton v. White*, 163 N. C. 90, 79 S. E. 427.

For a case of an appeal under this section see *In re Drainage District*, 162 N. C. 127, 78 S. E. 14.

### (30). Outlet for lateral drains.

The owner of any land that has been assessed for the cost of the construction of any ditch, drain or water course, as herein provided, shall have the right to use the ditch, drain or water course as an outlet for lateral drains from said land; and if said land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if said land is separated from the ditch, drain or water course by the



land of another or others, and the owner thereof shall be unable to agree with said other or others as to the terms and conditions on which he may enter their lands and construct said drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. When the ditch is constructed it shall become a part of the drainage system and shall be under the control of the board of drainage commissioners and be kept in repair by them as herein provided. (1909, c. 442, s. 30; 1915, c. 43.)

32. See notes to Subsection 33.

33. Where the provisions of this and the preceding section are complied with by the drainage commissioners, by their terms all parties to the proceeding, who fail to pay the full amount for which their lands are liable, will be held to have consented to the issuing of the bonds. *Commissioners v. Engineering Co.*, 165 N. C. 37, 80 S. E. 897.

34. An issue of bonds by a smaller district, within a larger one, is not rendered invalid at the suit of a purchaser because of the larger district which includes it, it being provided that the bonds of the latter shall have priority of lien to those of the former, with which understanding the bonds were sold and purchased. *Drainage Commissioners v. Farm Association*, 165 N. C. 697, 81 S. E. 947.

34a. The assessment and bonds provided for by this and the preceding subsection have priority over a deed of trust upon lands within the district, though executed prior to its formation. *Drainage Commissioners v. Farm Association*, 165 N. C. 697, 81 S. E. 947.

Where the purchaser of bonds issued by a drainage district refuses to take the bonds upon the ground that he had purchased them upon condition that they should be the first lien upon the lands contained in the district to the extent of the assessment, and that a large portion of the lands were subject to a first lien by mortgage, or deed of trust, the mortgagee or trustee is not a necessary party in an action involving the validity of the bonds. *Drainage Commissioners v. Farm Association*, 165 N. C. 697, 81 S. E. 947.

37. Cited but not construed in *Commissioners v. Engineering Co.*, 165 N. C. 37, 80 S. E. 897.

38½. Chapter 20, Laws 1895, providing for straightening out and cleaning the channel of Cold Water Creek, in no wise covers the ground of this statute, and is not a bar to proceedings hereunder. *In re Big Cold Water Drainage District*, 162 N. C. 127, 78 S. E. 14.

#### 4018b. To encourage the reclamation and improvement of swamp and lowlands.

1. Whenever a majority of the land owners or the persons owning three-fifths of all the land in any well defined swamp or lowland shall by a written agreement agree to give a part of the land situated in said swamp or lowland as compensation to any person, firm or corporation who may propose to cut or dig any main drainway through said swamp or lowland, then the person, firm or corporation so proposing to cut or dig said main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the said drainway through any lands in its proposed course, whether the owners of the said land may have consented thereto or not, and the said person, firm or corporation so

proposing to cut or dig said drainway shall have the proper and necessary right of way for that purpose and for all things incident thereto through any lands or timbers situated within said swamp or lowland.

2. After the said drainway herein provided for shall be completed, the person, firm or corporation cutting or digging the same shall be entitled to recover of the land owners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made an amount equal to the benefits to accrue to said lands by reason of the said drainway: *Provided*, that the recovery from any owner of the said land shall be limited to the benefits to accrue to that land owned by such person and situated in said swamp or lowland or adjacent thereto; and, *Provided, further*, that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon said land, said lien to be in force regardless of who may own said land at the time the amount to be recovered as compensation for digging or cutting said drainway shall be determined.

3. After the completion of the said main drainway, upon the application of the person, firm or corporation or their heirs or assigns digging or cutting the said main drainway, the clerk of the superior court of the county in which any land through which said drainway may pass is situated shall issue a notice to be served by the sheriff upon any person who may have failed to agree with the person, firm or corporation digging or cutting said drainway upon a compensation to be paid by the land owner for the digging or cutting of said drainway, notifying said land owner that on a certain day, which shall be named in said notice and not less than twenty days from the date of the issuing of said notice, the said clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by said drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the said clerk of the superior court what amount shall be paid therefor by the various land owners who may have failed to arrange for and agree upon the compensation for the said drainage as aforesaid. In making the appointment of the said viewers, the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified.

4. A report signed by two of the said persons appointed as viewers shall be entered by the clerk as the report of said viewers, and from the said report any land owner affected thereby and the person, firm or corporation digging or cutting said drainway shall have the right of appeal and the right to have any issue arising upon said report tried by a jury, provided exceptions shall be filed to said report within twenty days after the filing of said report with the clerk, in which exceptions,



so filed with them, may be a demand for a jury trial. If a jury trial be demanded the clerk shall transfer the proceedings to the civil issue docket and it shall be heard as other civil actions. If no jury trial be demanded the clerk shall hear the parties upon the exceptions filed and appeal may be had as in special proceedings, but no jury trial shall be had unless demanded as herein provided for.

5. Unless an appeal shall be taken by any person affected by said report and a jury trial demanded within twenty days after the said report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the viewers, if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within twenty days the judgment of confirmation shall be the judgment of the court.

6. The amount to be recovered from any person as compensation for digging or cutting the said drainway after said amount shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court; and one payment on the same day each year thereafter until the full amount be paid. (1915, c. 141.)

#### **4018c. Actions for money advanced by State treasurer.**

Upon request of the Department of Agriculture the Attorney-General shall bring in the superior court of Wake County an action against the drainage commissioners of any drainage district that has failed or may hereafter fail to refund any money advanced by the State Treasurer under the provisions of section fourteen, chapter sixty-seven of the Public Laws of one thousand nine hundred and eleven, the said action to be brought both against the board of drainage commissioners and the bond of the petitioners for the establishment of the district required by section two of chapter four hundred and forty-two of the Public Laws of one thousand nine hundred and nine. (1915, c. 235.)

#### **4019-4022.**

For notes on these sections see Supplement 1913.

#### **4026.**

For notes on this section see Supplement 1913.

#### **4047.**

The law presumes that those claiming swamp lands under the deed of the State Board of Education acquired a good and valid title, and the burden of proof is placed on the adverse party to rebut such presumption by showing a good and valid title in himself. *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430.

It seems that a plaintiff, claiming swamp lands within the meaning of Section 1693(3) must show that the *locus in quo* had been granted by the State prior to 1825. *Weston v. Lumber Co.*, 162 N. C. 165, 77 S. E. 430.

For additional notes on this section see Supplement 1913.

**4048.**

For notes on this section see Supplement 1913.

**4053.**

Amended, see Supplement 1913.

**4056a. Counties, townships and certain school districts may issue bonds to build school houses.**

1. The board of county commissioners of any county in the State shall, upon the petition of the county board of education, order an election after thirty days notice at the courthouse door and a publication of four weeks in some newspaper published in the county, to be held in any county, township or school district which embraces an incorporated town or city or in which there is maintained a public high school, to ascertain whether the voters in said county, township or school district are in favor of issuing bonds for the purpose of building, rebuilding and repairing schoolhouses and furnishing the same with suitable equipment. The amount of bonds to be issued and the rate of interest they are to bear which shall not be more than six per cent per annum, payable semi-annually, and the length of time the bonds are to run, which shall not be more than twenty years, and the maximum tax that may be levied, which shall not exceed thirty cents on the one hundred dollars and ninety cents on the poll, shall be set forth in the petition of the county board of education and in the order for the election made by the board of county commissioners. In no case shall the bonds authorized under this act for an entire county exceed the sum of one hundred thousand dollars nor for a township or school district the sum of twenty-five thousand dollars, but the bonds for a township or school district may be in addition to the bonds for the entire county.

2. The election for an entire county shall be held under the rules and regulations governing general elections as near as may be, and if for a township or school district then under the rules and regulations governing elections in special tax districts as prescribed in section four thousand one hundred and fifteen of the Revisal of one thousand nine hundred and five; but whether the election be for a county or for a township or school district a new registration shall be ordered. At said election those favoring the issuance of bonds and the levying of a special tax shall vote a ballot on which shall be printed the words "For Schoolhouse Bonds," and those who are opposed shall vote a ballot on which shall be printed the words "Against Schoolhouse Bonds." The expenses of holding such elections shall be paid out of the general school fund of the county.



3. If a majority of the qualified voters shall vote "For Schoolhouse Bonds" then it shall be the duty of the county board of commissioners to issue bonds not exceeding the amount specified in the order of election as the county board of education may request, and shall thereafter annually levy a sufficient tax not exceeding the amount specified in the order of election to pay the interest on said bonds and create a sinking fund sufficient to pay the principal and interest on said bonds when they fall due.

4. The said bonds when so issued shall be delivered to the county board of education who shall sell the same for not less than par and hold the proceeds for the benefit of the county building fund if the election be for the entire county or for the benefit of the township or school district in which the election was held. The said fund shall be paid out upon the order of the committee or trustees of the township or school district to which the fund belongs, and upon order of the board of education if the fund belongs to the entire county. The sinking fund provided for by this act shall be invested by the county board of education in safe securities or may be deposited in the bank that will pay as much as four per cent per annum compounded quarterly, and will give a sufficient bond for the safety of such deposit.

5. The taxes levied hereunder shall be collected by the sheriff or other officer charged with the collection of other taxes, and they shall in respect thereto be liable officially as well as personally to all requirements of the law now or hereafter to be prescribed for the faithful collection and payment of other county taxes. (1915, c. 55. In effect February 26, 1915.)

**4057-4061.**

All of these sections amended, see Supplement 1913

**4063.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4066-4068.**

These sections amended, see Supplement 1913.

**4073.**

Amended, see Supplement 1913.

**4083.**

Amended, see Supplement 1913.

**4084a. Kindergartens to be established.**

1. Upon a petition by the board of directors or trustees or school committee of any school district, endorsed by the county board of education, the board of county commissioners, after thirty days notice at the courthouse door and three other public places in the district named, shall order an election to ascertain the will of the people within said district

whether there shall be levied in such a district a special annual tax of not more than fifteen cents on the one hundred dollars worth of property and forty-five cents on the poll for the purpose of establishing kindergarten departments in the schools of said districts. The election so ordered shall be conducted under the rules and regulations for holding special tax elections set out in section four thousand one hundred and fifteen of the Revisal of one thousand nine hundred and five.

2. At such election those who are in favor of the special tax shall vote a ballot on which shall be printed the words, "For Kindergartens," and those who are opposed shall vote on a ballot on which shall be printed the words "Against Kindergartens."

3. If a majority of the qualified voters shall vote in favor of the tax, then it shall be the duty of the board of trustees or directors or school committee of said district to establish and provide for kindergartens for the education of the children in said district of not more than six years of age, and the county commissioners shall annually levy a tax for the support of said kindergarten departments not exceeding the amount specified in the order of election. That said tax shall be collected as all other taxes in the county are collected and shall be paid by the sheriff to the treasurer of the said school district to be used exclusively for providing adequate quarters and for equipment and for the maintenance of said kindergarten department.

4. No teacher or instructor shall be employed to teach in the kindergartens of the State who has not taken at least a two years' course in kindergarten training in and received a diploma from a recognized normal training school approved by the State Board of Examiners: *Provided, first*, that in lieu thereof they may offer an equivalent of training satisfactory to the State Board of Examiners; *second*, that all rules and regulations for examination, qualification and admission of teachers and instructors in the free public school kindergartens in this State shall be prescribed and approved by the State Board of Examiners; *third*, that no kindergarten teacher shall be allowed to teach a kindergarten department larger than would result from an enrollment of twenty (20) pupils. (1915, c. 234. In effect March 9, 1915.)

#### 4085.

For notes on this section see Supplement 1913.

#### 4086. Separate schools for races; no discrimination against either race.

The children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of either race. All white children shall be taught in the public schools provided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with negro blood or what is generally known as Croaton Indian blood in his veins, however remote the strain, shall attend a school for the white race; and no such child



shall be considered a white child. The descendants of the Cherokee Indians of Robeson county now living in Robeson and Richmond counties shall have separate schools for their children as hereinafter provided in this chapter. (1911, c. 215; 1913, c. 123; 1915, c. 236.)

Where the father of the child brings suit against the county board of education to compel its admission to school, the father is but a nominal party, the party in interest being the child. *Medlin v. Board of Education*, 167 N. C. 239, 83 S. E. 483.

Testimony of witnesses of the father's declarations to them that he had married a negress can only be received as hearsay evidence in impeachment of his contradictory testimony, given by him as a witness, and not as substantive evidence. *Medlin v. Board of Education*, 167 N. C. 239, 83 S. E. 483.

Where the parentage of an ancestor of the child is relevant, testimony of general reputation of such parentage should be elicited, and a question, "Who was said to be her mother?" is held to be incompetent, in this case, as hearsay. *Medlin v. Board of Education*, 167 N. C. 239, 83 S. E. 483.

This section declaring who shall be considered a white child where there is an admixture of negro blood is constitutional and valid. *Johnson v. Board of Education*, 166 N. C. 468, 82 S. E. 832.

4089.

Amended, see Supplement 1913.

**4092a(1). School attendance required; term; records and reports of private and church schools.**

From and after the first day of July, one thousand nine hundred and thirteen, every parent, guardian, or other person in the state of North Carolina having charge or control of a child or children between the ages of eight and twelve years, shall cause such child or children to attend the local public school in the district, town or city in which he resides, continuously for four months of the school term of each year, except as hereinafter provided. This period of compulsory attendance shall commence at the beginning of the compulsory period of the school term nearest to the eighth birthday of such child or children, and shall cover the compulsory period of four consecutive school years thereafter. This period of compulsory attendance for each public school shall commence at the beginning of the school term of said school unless otherwise ordered by the county board of education or, in case of towns or cities of two thousand or more inhabitants, by the board of trustees of the public schools of said towns or cities. Continuous attendance upon some other public school or upon any private or church school taught by competent teachers may be accepted in lieu of attendance upon the local public schools: *Provided*, that said period of continuous attendance upon such other school shall be for at least four months of each year: *Provided, further*, that any private or church school receiving for instruction pupils between the ages of eight and twelve years shall be required to keep such records of attendance of said children and to render such reports of same as are hereinafter required of public

schools. And attendance upon such schools refusing or neglecting to keep such records and to render such reports shall not be accepted in lieu of attendance upon the local public school of the district, town or city which the child shall be entitled to attend: *Provided*, the period of compulsory attendance shall be in force and apply between the ages of eight and fifteen years in Mitchell County. *Provided, further*, that the county board of education in any county may in its discretion, or the board of trustees of the public schools of any town of two thousand or more inhabitants may in its discretion, extend the age limit for compulsory attendance from twelve years to thirteen or to fourteen years. (1913, c. 173, s. 1; 1915, c. 236, s. 3a.)

**(5). Appointment and duties of attendance officer.**

The county board of education in each county shall appoint and remove at will an attendance officer in each township to enforce the provisions of this act. It shall be the duty of the school committee or district to furnish each superintendent, principal, or teacher in charge of each school, and to furnish also the attendance officer of each township and the county superintendent, with an accurate school census of each school district at the opening of the school in said township or district each year. The superintendent, principal, or teacher in charge of any school shall at the end of each week serve written or printed notice upon every parent or guardian or other person having in charge any child within the compulsory attendance age, notifying him of the absences of such child during the week and shall file copies of all such notices with the attendance officer immediately; and said parent, guardian, or person shall be required to render promptly to such superintendent, principal, or teacher in charge of the school the excuse or cause of absence of such child. The failure of such parent, guardian or person to render satisfactory excuse within three days after the mailing or serving such notice shall be *prima facie* evidence of the violation of this act in case of any prosecution of such person under this act; and shall subject such person to prosecution therefor and to the payment of the costs incurred in such prosecution. The names of all persons failing to render satisfactory legal excuse shall be reported immediately to the attendance officer. Prosecutions under this act shall be brought by the attendance officer in the name of the State of North Carolina before any justice of the peace, or police justice, or recorder of any county, town, or township, in which the person prosecuted resides. Upon failure of any attendance officer to prosecute, the county superintendent, upon report and recommendation of principal or teacher in charge or of the school committee, shall prosecute for violation of this act. The attendance officer shall keep an accurate record of all notices served, all cases prosecuted, and all other services performed, and shall make an annual report of same to the county board of education. In the discretion of the county board of education, the attendance officer shall be allowed reasonable compensation from the county school fund for such services



as are required of him under this act, compensation for which is not specifically provided for herein: *Provided*, that in case the county board of education shall appoint a school committeeman or township constable as attendance officer, the duties of such officer herein prescribed are hereby declared to be a part of his duties *ex officio*: *Provided, further*, that the school committee or board of trustees of any school in any town or city of five thousand or more inhabitants, operating its schools under special charter, is hereby authorized and empowered, if in their judgment such action is wise, to appoint an attendance officer for the schools under their direction, fix his compensation, and pay the same out of the special tax school funds of said town or city, and assign to him other duties in addition to those enumerated above. (1913, c. 173, s. 5; 1915, c. 236, s. 3b.)

**(6). Co-operation of principals and teachers.**

It shall be the duty of all principals and teachers to co-operate with the attendance officers in the enforcement of this law. To this end it shall be the duty of the principal or teacher in charge in every school in which pupils between the ages of eight and twelve years are instructed to keep an accurate record of the attendance of such pupils. On or before the fourth Monday of each calendar month during the compulsory attendance term of each school the superintendent, principal or teacher in charge of each school in each township shall report to the attendance officer of said township and the county superintendent the names of all children that have been absent without legal excuse during said month, the number of absences of each child together with the name of the parent, guardian, or person in charge of said child. The said township attendance officer shall immediately upon receipt of said report notify each of said parents, guardians, or other persons having in charge such reported children to meet him at a designated place in said township at a designated hour on Saturday following said fourth Monday for the purpose of explaining the cause of such absence of such children, and said attendance officer, after hearing and passing upon the excuses rendered, shall proceed with the prosecution as provided for in this act against those parents, guardians, or other persons who fail to render legal excuse for the absence of such reported children.

Said attendance officer shall be paid out of the general school fund of the county two dollars for his services rendered on said day for said purpose. The failure of any parent, guardian, or other person in charge of any child that has been reported absent, without excuse, to meet said attendance officer on said day without satisfactory excuse rendered shall be *prima facie* evidence of the violation of the provisions of this act and shall subject him to prosecution hereunder and to the penalty prescribed herein. Upon the willful or negligent failure of any principal or teacher in charge of any school to comply with the provisions of this section, the county superintendent shall deduct from his or her salary for the cur-

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rent month the sum of five dollars before approving the voucher therefor. (1913, c. 173, s. 6; 1915, c. 236, s. 3c.)

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

### 4092b-4092h.

All of these sections repealed, see Supplement 1913.

### 4097.

Repealed, see Supplement 1913.

### 4099.

Amended, see Supplement 1913.

### 4100-4105.

These sections amended, see Supplement 1913.

### 4106a(4). Statements from county boards of education; apportionment of fund for salaries of teachers.

On or before the first Monday in December of each and every year the county board of education of each and every county entitled to aid from this fund shall submit to the state board of education, on blanks furnished for that purpose by the state superintendent of public instruction, a sworn itemized statement by districts, showing the number of teachers employed in each district, the grade or class and the salary of each teacher, and such other information as may be required. Said statement shall further show under oath that provision has been made as required by law for a four months school term in each district of said county, the rate of special tax levied therefor and the aggregate fund derived or to be derived therefrom. On or before the first Monday in February of each year the state treasurer shall certify to the state board of education the amount of said state equalizing school fund derived and to be derived from said five cents property tax levied and set aside from the state tax levy on every one hundred dollars value of real and personal property in the state during the school year ending June thirtieth thereafter, and the state board of education shall apportion said fund among all the counties of the state that have complied with all the requirements of the law for providing a school term of four months in every school district, so as to equalize the school terms in said counties and bring the term in each legal school district in each of said counties to an equal length, bringing all terms in all districts to a minimum of six months, or as near thereto as the funds provided for this purpose render possible. The state board of education, however, shall apportion this fund only for the salaries of the teachers employed, and no part of said fund shall be apportioned or used for any other purpose than for the payment of the salaries of the said teachers for the period designated by the state board of education in the apportionment to each county. The salaries apportioned from said fund for teachers shall not



exceed forty dollars per month for first grade, thirty dollars per month for second grade, and twenty dollars per month for third grade. Any balance of said fund that may remain after equalizing terms to six months as herein provided shall be apportioned among all the counties of the state per capita as to school population.

In the apportionment of the state equalizing fund the state board of education shall observe as the maximum that may be set aside for contingent expenses (said contingent expenses to be construed to mean all items of expenses except the apportionment for teachers' salaries and for buildings, repairs, and equipment as provided by section four thousand one hundred and sixteen of the Revisal of one thousand nine hundred and five as amended) the following: In counties with a total school fund from general county and state sources of ten thousand dollars or less not more than twenty-five per cent thereof; in counties with a total school fund of over ten thousand dollars and less than twenty thousand dollars not more than twenty per cent thereof; in counties with a total school fund of over twenty thousand dollars and less than thirty thousand dollars not more than seventeen and one-half per cent thereof; in counties with a total school fund of more than thirty thousand dollars and less than fifty thousand dollars not more than sixteen per cent thereof; and in counties with a total school fund of more than fifty thousand dollars not more than fifteen per cent thereof. *Provided*, that these maximum limits shall apply only in the apportionment of the state equalizing fund. (1913, c. 33, s. 4; 1915, c. 236, s. 9.)

**4108.**

Amended, see Supplement 1913.

**4110.**

Cited but not construed in *Board of Education v. Commissioners*, 167 N. C. 114, 83 S. E. 257.

**4111.**

The school taxes never reach the county treasurer as the sheriff must pay the whole of them directly to the treasurer of the school funds. *Board of Education v. Commissioners* 167 N. C. 114, 83 S. E. 257.

**4112.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4115. Special tax may be voted in special school districts.**

Special school tax districts may be formed by the county board of education in any county without regard to township lines under the following conditions: Upon a petition of one-fourth of the freeholders within the proposed special school district, in whose name real estate in such district is listed in the tax lists of the current fiscal year, endorsed by the county board of education, the board of county commissioners,

after thirty days notice at the courthouse door and three public places in the proposed district, shall hold an election to ascertain the will of the people within the proposed special school district whether there shall be levied in such district a special annual tax of not more than thirty cents on the one hundred dollars valuation of property and ninety cents on the poll to supplement the public school fund, which may be apportioned to such district by the county board of education, in case such special tax is voted. The board of county commissioners shall appoint a registrar and two pollholders and shall designate a polling place, and order a new registration for such district and the election shall be held in the district under the law governing general elections as near as may be, and the registrar and pollholders shall canvass the vote cast and declare the result, and shall duly certify the returns to the board of county commissioners, and the same shall be recorded in the records of said board of commissioners: *Provided*, the expense of holding said election shall be paid out of the general school fund of the county. At such election those who are in favor of the levy and collection of the tax shall vote a ticket on which shall be printed or written the words "For Special Tax," and those who are opposed shall vote a ticket on which shall be printed or written the words "Against Special Tax." In case a majority of the qualified voters at the election is in favor of the tax, the same shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes. All money levied under the provisions of this section shall, upon collection, be placed to the credit of the school committee in such district, which committee shall be appointed by the county board of education; and such school committee shall apportion the money among the schools in such district in such manner as in its judgment shall equalize school facilities.

Upon the written request of a majority of the committee or trustees of any special tax district, the county board of education may enlarge the boundaries of any special tax district established under this section, or by special act or charter of the general assembly of North Carolina, so as to include any contiguous territory, and an election in such new territory may be ordered and held in the same manner as prescribed in this section for elections in special school tax districts; and in case a majority of the qualified voters in such new territory shall vote at such election in favor of a special tax of the same rate as that voted and levied in the special tax district to which said territory is contiguous, then the new territory shall be added to and become a part of said special tax district; and in case a majority of the qualified voters at such election shall vote against said tax, the district shall not be enlarged.

Upon petition of two-thirds of the qualified voters residing in any special tax district established under this section, endorsed and approved by the county board of education, the board of county commissioners shall order another election in said district for submitting the question of revoking said tax and abolishing said district, to be held



under the provisions prescribed in this section for holding other elections: *Provided*, that no election for revoking a special tax in any special tax district shall be ordered and held in said district within less than two years from the date of the election at which the tax was voted and the district established, nor at any time within less than two years after the date of the last election on said question in said district; and no petition revoking such tax shall be approved by the county board of education oftener than once in two years; and if at such election a majority of the qualified voters in said district shall vote "Against Special Tax," said tax shall be deemed revoked and shall not be levied, and said district shall be discontinued: *Provided, further*, that the provisions for ordering a new election to revoke a special tax in any special tax district shall not apply to elections in such districts for increasing or restoring the special tax levy in such district, which elections may be ordered and held at any time in accordance with the provisions of this section for establishing new special tax districts. Special tax districts may be formed as provided herein out of portions of contiguous counties. The petition for such a district must be endorsed by the boards of education of both counties. The registrar and one poll holder shall be appointed by the board of commissioners of the county in which the larger number of petitioners reside, and one poll holder must be appointed by the board of commissioners of the other county. All the provisions of section four thousand one hundred and twenty-nine in regard to districts in contiguous counties shall be applicable as far as may be to the establishment of special tax districts out of portions contiguous counties herein provided. (1907, c. 835, s. 1f; 1909, c. 525, s. 4; 1911, c. 135, ss. 1i, 3; 1915, c. 236, s. 1b.)

An order of the commissioners endorsed on the petition as follows: "Election granted and ordered to be held in the town of Liberty on, etc.," was held in this case, when read with the petition to be sufficient to order an election for the district. *Gregg v. Commissioners*, 162 N. C. 479, 78 S. E. 301.

For additional notes on this section see Supplement 1913.

#### **4115a. Credit by taxes on tuition of certain children.**

Any parent or person *in loco parentis* residing outside of any special tax district, urban or rural, chartered or otherwise, and owning property within said district whose child, children or wards shall attend school in said district, shall be entitled to receive as a credit on the tuition of said child, children or wards the amount of special school taxes paid on said property. (1915, c. 93.)

#### **4116. Apportionment of school funds; reservation of contingent fund.**

The county board of education shall, on the first Monday in January and the first Monday in July of each year, apportion the school fund of the county to the various school districts; but it shall, before apportioning the school fund reserve as a contingent fund an amount suffi-

cient to pay the salary of the county superintendent and per diem and expense of the county board of education; and may further reserve as a fund for building and repairing schoolhouses and for equipment, in counties with a total school fund of five thousand dollars or less, not more than twenty per centum thereof; in counties with a total school fund of over five thousand dollars and not more than ten thousand dollars, not more than sixteen per centum thereof; in counties with a total school fund of over ten thousand dollars and not more than twenty-five thousand dollars, not more than ten per centum thereof; in counties with a total school fund of over twenty-five thousand dollars, not more than seven and a half per centum thereof, to be used as directed in section four thousand one hundred and twenty-four. It shall be the duty of the county board of education to distribute and apportion the school money so as to give to each school in the county for each race the same length of school term, as nearly as may be, each year. In making the apportionment the board shall have proper regard for the grade of work to be done and the qualifications of the teachers required in each school for each race. As soon as the apportionments are made, it shall be the duty of the board to notify the school committeemen and the treasurer of the county school fund of the amount apportioned to each school, designating each school by number, and stating whether for white, colored or Indian, and naming the township and county. Funds unused by any district during any year shall, if still unused at the January meeting subsequent to the close of the school year, be returned to the general school fund for reapportionment unless such district shall have been prevented from using such funds during that year by providential or other unavoidable causes:

*Provided*, that in the discretion of the county board of education it may also reserve sufficient funds, after first providing for a six months school term in every school district, to pay a part of the cost, not to exceed one-half, necessary to employ a capable physician for his entire time as county health officer whose election meets with the approval of said board and whose duties shall be specified by the county board of health to embrace those provided for in that part of section eleven, chapter sixty-two, of the public health laws of one thousand nine hundred and eleven [sec. 4538r(11)], relating to the medical inspection of schools and school children; and he shall lecture to the teachers in their meetings and supply them with printed instructions regarding measures for the proper care of the body, the recognition and prevention of disease, the recognition, prevention and correction of physical defects, etc.; and he shall keep an accurate daily record of the work he does under the provisions of this act and make weekly, monthly or quarterly reports giving such information as may be called for by blanks to be furnished by and returned to both the county board of education and the state superintendent of public instruction; and if the county health officer



should neglect for a period of ninety days to carry out the spirit of this act, unless his entire time should be required to fight an epidemic of some contagious or infectious disease, the county board of education may in its discretion withdraw its financial aid in his employment: *Provided, further*, that the county board of education may reserve as a further contingent fund a sufficient amount to pay the salary of an assistant superintendent, and to defray such other supervisory and administrative expenses as it may deem necessary, but the funds set aside for these purposes shall not operate to increase the amount to which said county would have been entitled from the State equalizing fund if said funds had not been set aside, and the same shall be included in the necessary expenses for a four months' school term for which a special tax, if necessary, must be levied under chapter thirty-three of the Public Laws of one thousand nine hundred and thirteen. (1913, c. 149, s. 1a; 1915, c. 236, s. 5a.)

There is no conflict between this section and Section 4124 and a corporate body having complete control and supervision of the public schools of a city is entitled to share in the building fund reserve by the county in which it is situated, under the condition prescribed in Section 4124, which should be enforced reasonably and not arbitrarily. *Commissioners v. Board of Education*, 163 N. C. 404, 79 S. E. 886.

There is no prohibition in the Constitution preventing a community, which pays a special tax for graded or other schools, from sharing in the equitable division of the tax for schools levied by the State. *Commissioners v. Board of Education*, 163 N. C. 404, 79 S. E. 886.

**4119.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4121.**

For notes on this section see Supplement 1913.

**4124.**

There is no conflict between Section 4116 and this section. This section does not say that all "new school houses" shall be under the control of the Board of Education, but that "the building of all new school houses" shall be under its control. It is silent as to the control of the buildings after they have been erected. *Commissioners v. Board of Education*, 163 N. C. 404, 79 S. E. 886.

For additional notes on this section see Supplement 1913.

**4125. Power of, to execute school law.**

In addition to all other duties and powers imposed and conferred upon it by law, the county board of education shall have general control and supervision of all matters pertaining to the public schools in their respective counties and are given the powers to execute, and is charged with the due execution of, the school laws in their respective counties; and all powers and duties conferred and imposed by this chapter and other laws of the state respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred

and imposed upon the county boards of education; and an appeal shall lie from all other county school officers to such board. In all actions brought in any court against a county board of education for the purpose of compelling the board to admit any child or children who have been excluded from any school by the order of the county board of education, the order or action of the board shall be presumed to be correct, and the burden of proof shall be on the complaining party to show to the contrary. (1915, c. 236, s. 1c.)

**4129.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4131.**

Amended as to Duplin County only. P. L. L. 1915, c. 791.

Amended, see Supplement 1913.

Property taken for public schools is taken for a public use, within the meaning of the Constitution. School Trustees v. Hinton, 165 N. C. 12, 80 S. E. 890.

**4133.**

Amended, see Supplement 1913.

**4135.**

Amended, see Supplement 1913.

**4141.**

Amended, see Supplement 1913.

**4145.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4148. Census to be taken; reports; deaf, dumb, blind and illiterate to be reported.**

The school committee of each township or district is hereby required to furnish annually to the county superintendent of schools a census report of all the children of school age in the township or district by name, age, sex, and race, and the names of their parents or guardians. The blanks upon which such reports are to be made shall be furnished to the various school committees by the county superintendent at least two weeks prior to the beginning of the school term in each district, and the report, duly sworn to by the person taking the census, and signed and approved by the members of the committee, shall be returned to the county superintendent on or before the first day of the school term of each school year; and any committee failing to comply with the provisions of this section, without just cause, shall be subject to removal. The school committee is authorized to designate one of the teachers, or some other competent person in each school district, to take the census. The committeeman, or other person taking the census, shall be allowed a sum not exceeding three cents per name for all names



reported between the ages of six and twenty-one. The committee shall furnish to the teacher at the opening of the school a complete copy of the census furnished to the county superintendent, which shall be recorded by the teacher in the school register. The census record entered in the register shall show the name, age, and sex of each child of school age in that district, together with the names and addresses of the parents or guardians. The census report shall show also the number of children of compulsory attendance age, and the committee shall furnish the attendance officer a separate list of all children subject to compulsory attendance, containing the name, age, race, and sex of each and the name of their parents or guardians.

There shall also be reported, by race and sex, the number and names of all persons between the lages of twelve and twenty-one who can not read and write and the number and names, by race and sex, of all persons over twenty-one years of age who can not read and write, and the number of deaf and dumb and blind between the ages of six and twenty-one years, designating the race and sex and the address of the parents or guardians of such children.

The committee shall also report to the county superintendent, who in turn shall report to the county board of education, the number of public schoolhouses and the value of all public school property for each race, separately. (1911, c. 135, s. 1d; 1915, c. 236, s. 1f.)

For notes on this section see Supplement 1913.

**4152.**

Amended, see Supplement 1913.

**4153.**

The office of treasurer of the school funds and of county treasurer are distinctive offices, though held by the same person. Board of Education v. Commissioners, 167 N. C. 114, 83 S. E. 257.

**4154.**

Cited but not construed in Board of Education, 167 N. C. 114, 83 S. E. 257.

**4155.**

An order "to be paid by the county treasurer out of the county funds," gives no authority to direct any part of the taxes collected for schools. Board of Education v. Commissioners, 167 N. C. 114, 83 S. E. 257.

**4158. To report annually to state superintendent and to county board.**

The treasurer of any county, town or city school fund shall report to the state superintendent of public instruction on the first Monday of August of each year the entire amount of money received and disbursed by him during the preceding school year, designating by items the amounts received respectively from property tax, poll tax, liquor licenses, fines, forfeitures and penalties, auctioneers, estrays, from state treasurer and from other sources. He shall also designate by item the sum paid

to teachers of each race respectively, for schoolhouses, school sites in the several districts, and for all other purposes specifically, and in detail, by item, and on the same date he shall file a duplicate of such report in the office of the county board of education. He shall make such other reports as the county board of education of the county may require from time to time. Whenever the sheriff or other collecting officer pays over money to the treasurer of the school fund he shall designate the items as indicated in this section, and these items shall be stated in the receipts given by the treasurer. In all counties in which the office of county treasurer has been abolished all banks and other corporations handling the public school funds shall be required to make all reports thereof required of the treasurer of the county school funds under sections four thousand one hundred and fifty-seven and four thousand one hundred and fifty-eight of the Revisal of one thousand nine hundred and five as amended by any subsequent legislation. (1913, c. 149, s. 1i; 1915, c. 236, s. 1g.)

**4161-4165.**

All of these sections amended, see Supplement 1913.

**4162. Examinations; proficiency; grades; [state board of examiners].**

On the second Thursday of July and October of every year the county superintendent of schools of each county shall publicly examine all applicants of good moral character for teachers' certificates on all subjects required to be taught in the public schools and also on the theory and practice of teaching. And the county superintendent may continue the examination from day to day, if necessary, until all applicants have been examined, and, with the approval of the county board of education, he may, after giving at least ten days notice, hold public examinations on two other dates during the year. All examinations of teachers shall be held at the county courthouse, but for the convenience of teachers the county superintendent may designate another place: *Provided*, due notice of the time and the place shall have been given. No private examination of applicants for teachers certificates shall be given by the county superintendent unless a reasonable excuse shall be rendered for failure to attend the public examination, and for every private examination each applicant for a certificate shall pay in advance to the county superintendent a fee of three dollars, to be paid by him to the treasurer of the county school fund, to be placed to the credit of the general school fund of the county. A general average of ninety per cent and over shall entitle the applicant to a first grade certificate; a general average of eighty per cent and less than ninety per cent shall entitle the applicant to a second grade certificate, and a general average of seventy per cent and less than eighty per cent shall entitle the applicant to a third grade certificate. No certificate shall be valid except in the county in which it is issued. First grade certificates shall be valid for two years from date of issue; other grades of certificates shall be valid for only



one year and shall not be renewed except upon examination. The county superintendent may invite competent persons to assist in the examination of applicants for certificates, and he shall file in his office a copy of all examination questions and also preserve for at least one year the examination papers and grades of all applicants for certificates, and upon request of the state superintendent of public instruction he shall send all examination papers and their gradation and a copy of all examination questions to the office of the state superintendent of public instruction: *Provided*, that the state superintendent of public instruction, in lieu of the provisions of this section in reference to the examination, the gradation and the certification of teachers, may in his discretion provide for a uniform system of gradation, examination and certification of public school teachers, prescribing the examination, the time and manner of conducting the same, and also for making provision for the classification of teachers' certificates into primary, intermediate and high school.

In addition to the three grades of certificates herein provided, a certificate known as state certificate, signed by the state superintendent and the board of examiners hereinafter provided, shall be issued to any person who, upon examination by said board of examiners, shall make a general average of not less than seventy-five per cent. Said examinations shall be in writing, and may be conducted before the county superintendent of public instruction in any county, or before any person selected by said board of examiners, under such rules and regulations as said board may adopt; but the questions for such examination shall be furnished by said board of examiners, and said board shall meet at the call of the state superintendent of public instruction to examine and grade all papers submitted by applicants for such state certificate. *Provided*, that the said board of examiners may, in their discretion, and in lieu of examination allow certain credits for academic and professional work done in approved institutions and for successful experience. The state superintendent of public instruction shall be *ex officio* chairman of said board, and the chief clerk in the office of the state superintendent of public instruction shall be *ex officio* secretary of the said board, and shall be paid out of the state treasury three hundred dollars annually as compensation for additional services as secretary; and all persons who desire to be examined for a state certificate shall file an application with the state superintendent of public instruction, who shall notify such person when and where such examination will be held: *Provided*, that no person shall be permitted to stand such examination without first filing with the state superintendent of public instruction a statement from the county superintendent of public instruction of the county in which said applicant last taught that said applicant holds a first grade certificate and has taught successfully at least one year. Said state certificate shall be valid in any county in the state, and no other examination or certificate as a prerequisite for teaching a public school shall be required of

any person holding such state certificate for a period of five years from the date of issue of said state certificate, and said certificate shall be subject to renewal and may, in the discretion of the board of examiners, on its second renewal be converted into a life certificate, and the minimum salary paid to any teacher holding such state certificate shall be thirty-five dollars per month. Said board of examiners, under the direction of the state superintendent of public instruction, shall examine all teachers who apply to the state superintendent for a high school teacher's certificate, and said examination shall be conducted in the same manner as the examination for state certificate as herein provided. *Provided*, that the said board of examiners may, in their discretion, and in lieu of examination, allow certain credits for academic and professional work done in approved institutions and for successful experience, and said high school teacher's certificate shall be subject to renewal and may, in the discretion of the board of examiners, on its second renewal be converted into a life certificate. Said state board of examiners shall consist of not less than three (3) and not more than five (5) practical school teachers, who shall be appointed by the state board of education upon the recommendation of the state superintendent of public instruction, and they shall hold office for a term of four (4) years, and the members of said board actually serving shall be paid a per diem of four dollars (\$4) per day during the time that they are actually engaged, and in addition shall be repaid all money actually expended by them in payment of necessary expenses while so engaged, to be paid out of the public fund, and they shall make out and swear to an itemized statement of such expenses: *Provided*, that the state superintendent of public instruction shall not be allowed any per diem for services as chairman of said board of examiners. (1907, c. 835, s. 1i; 1911, c. 135, s. 3; 1915, c. 236, s. 8.)

**4167. Teachers' institutes and schools, how conducted; teachers must attend.**

The county board of education of every county shall biennially appropriate an amount not less than two hundred dollars nor more than two hundred and fifty dollars out of the public school funds of the county, the definite amount between the minimum and maximum thus fixed to be determined by the state superintendent of public instruction, for the purpose of conducting biennially a teachers' institute and school for the training of the public school teachers of the county at some convenient and satisfactory place. The biennial county teachers' institute and school provided for in this section shall be conducted by some practical teacher or teachers appointed by the state superintendent of public instruction at such time and place as shall be determined by the state superintendent of public instruction after consultation with county superintendent of school and the county board of education. All public school teachers of the state and all high school and graded school teachers are hereby required to attend biennially some county teachers' institute or accredited



summer school continuously for a term of not less than two weeks, unless providentially hindered; and failure so to attend such institute or summer school shall be cause for debarring any teacher, so failing, from teaching in any of the public schools, high schools, or graded schools of the state until such teacher shall have attended, as required by law, some county institute or accredited school as herein provided for. The rules and regulations governing all teachers' institutes, the course of study to be pursued and the proper credits for attendance on the same shall be prescribed by the state superintendent of public instruction. And proper and just provision shall be made for the training of the teachers of each race in separate institutes and schools: *Provided*, that counties whose total annual public school fund is less than eight thousand dollars may arrange with an adjoining county for holding a biennial teachers institute and school as herein provided for making such biennial appropriation and arrangement with an adjoining county as shall be equitable and satisfactory, which appropriation and arrangement and the terms of the same shall first be approved by the state superintendent of public instruction: And, *provided further*, that a properly signed certificate of continuous attendance at some summer school of good standing for a period of not less than three weeks may be accepted by the county superintendent of schools as a substitute for attendance on the biennial teachers institute and school herein provided for under such rules and regulations as shall be prescribed by the state superintendent of public instruction. *Provided, further*, that the counties holding institutes on alternate years shall be equally divided in number, as nearly as may be, by the State Superintendent of Public Instruction after consultation with the county superintendents of schools and the county boards of education; and that teachers in such counties as may be exempted from holding institutes in one thousand nine hundred and sixteen, under this provision in order to divide the two groups of counties evenly, shall not be debarred from teaching for the school year ending June thirtieth, one thousand nine hundred and seventeen, because of non-attendance upon an institute or summer school in the year one thousand nine hundred and sixteen. (1909, c. 525, s. 6; 1911, c. 135, s. 1g; 1915, c. 236, s. 1e.)

#### 4167a. County board may establish for county.

With the consent of the state board of education, the county board of education in any county may, in its discretion, establish and maintain, for a term of not less than seven school months in each school year, one or more public high schools for the county at such place or places as shall be most convenient for the pupils entitled to attend and most conducive to the purposes of said school or schools. *Provided*, that not more than four public high schools in any one county shall be entitled under the provisions of this act to receive State aid. (1907, c. 820, s. 1; 1913, c. 149, s. 3; 1915, c. 236, s. 4a.)

**4167b. School committee appointed for.**

For each public high school established under this act [secs. 4167a-4167k] a committee of three persons shall be appointed by the county board of education, who shall be known as the school committee of .....public high school of .....county. The powers, duties and qualifications of said committeemen shall be similar to those of other public school committeemen. They shall be appointed as follows: one for a term of two years, one for a term of four years, and one for a term of six years, and at the expiration of the term of any committeeman his successor shall be appointed for a term of six years: *Provided*, that in case of death or resignation of any committeeman, his successor shall be appointed for the unexpired term only. Within two weeks after appointment the committee shall meet and elect a chairman and a secretary, and enter upon the performance of their duties: *Provided, further*, that the board of trustees or school committee of any chartered school receiving aid under this act shall serve as the high school committee for said school. (1907, c. 820, s. 2; 1913, c. 149, s. 3b; 1915, c. 236, s. 5b.)

**4167d. County board to make reports; inspection of schools; employment and salaries of teachers.**

It shall be the duty of the county board of education to locate all high schools established under this act [secs. 4167a-4167k], to furnish the state superintendent of public instruction with such information relative to said schools as he may require, and to make such local rules and regulations for the conduct of said schools as may be necessary: *Provided*, all public high schools established and aided under this act shall be subject to such inspection as may be directed by the state superintendent of public instruction, and shall make such reports as shall be required by him: *Provided further*, that no one shall teach in any public high school that receives state funds under this act who does not hold a high school teacher's certificate from the state board of examiners, who shall have power to prescribe a standard of scholarship and examination for same: *and provided further*, that no one shall be employed as teacher in such high school without the approval of the county superintendent. (1907, c. 820, s. 4; 1913, c. 149, ss. 3c, 3d; 1915, c. 236, s. 4b.)

**4167e-4167f.**

These sections amended, see Supplement 1913.

**4167g. Appropriation for support of.**

Before any public high school shall be entitled to receive State aid under the provisions of this act, its application therefor shall have been approved by both the county board of education and the State Board of Education; and the amount of State aid to be given shall be determined by the State Board of Education, and the county board of educa-



tion shall apportion to each public high school out of the general county fund at least as much as the State apportions to said high school; and the local committee of each public high school receiving State aid under the provisions of this act shall apportion out of the local school fund raised by special tax, or shall raise by private donation or otherwise, at least as much as the State Board of Education apportions to said high school under the provisions of the act; [4167a-4167k], and when the high school committee shall deposit its apportionment with the treasurer to the credit of said public high school. When the treasurer and the board of education shall make an apportionment out of the general school fund of the county, as provided herein, and deposit same with the treasurer to the credit of said public high school. When the treasurer and the county superintendent shall certify to the State Superintendent of Public Instruction that the apportionments by the local committee and the county board of education, herein required, have been duly authorized for any high school, a State warrant shall be issued upon the requisition of the State Superintendent of Public Instruction for such an amount as the State Board of Education shall have approved under the provisions of this act and sent to the treasurer to be placed to the credit of said public high school. All high school funds herein provided and placed to the credit of any high school shall be used exclusively for the payment of teachers' salaries in said high school and for such necessary incidental expenses as may be approved by the State Superintendent of Public Instruction; and said high school funds shall be paid out by the treasurer for the purposes herein specified only upon the order of the public high school committee, approved by the county superintendent of schools. *Provided*, that the amount apportioned by the State Board of Education to any public high school, maintained under the provisions of this act, shall not be less than two hundred dollars nor more than six hundred dollars for any year. *Provided further*, that after a public high school has been approved and established under the provisions of this act, it shall not be discontinued by the county board of education without the consent and approval of the State Board of Education. (1907, c. 820, s. 7; 1913, c. 149, s. 3g; 1915, c. 236, s. 4c.)

#### **4167h. Average daily attendance required.**

Every public high school receiving State aid under this act [4167a-4167k], shall maintain an average daily attendance of at least twenty high school students for the required term, and any public high school making any average daily attendance of less than twenty students for the required term shall not be entitled to receive State aid under this act; and any additional amount beyond the minimum apportioned to any public high school under the provisions of this act shall be conditioned, first, upon the average daily attendance above the required minimum for the preceding school year; second, upon the number of full-time high school teachers employed; and third, upon the grade and

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character of work done by said public high school. (1907, c. 820, s. 9; 1913, c. 149, s. 3h; 1915, c. 236, s. 5c.)

**4167j.**

Amended, see Supplement 1913.

**4167k. Treasurer high school fund; accounts and report.**

The treasurer of the county school fund, or in counties in which the office of treasurer has been abolished, any bank or other corporation handling the public school funds shall be treasurer of the public high school fund, except as is hereinafter provided. He shall keep a separate account of the funds of each public high school, and shall on the first Monday in July of each year, make to the county board of education and to the State Superintendent of Public Instruction a report of all receipts and expenditures of said fund for each separate high school for the preceding year: *Provided*, that the treasurer of any chartered school receiving State aid under the provisions of this act, may in the discretion of the State Board of Education, serve as treasurer of the public high school fund, but shall receive no commission for disbursing the funds apportioned by the county and the State under the provisions of this act. (1907, c. 820, s. 8; 1915, c. 236, s. 4d.)

**4167l.**

Amended, see Supplement 1913.

**4167m-4167t.**

For notes on these sections see Supplement 1913.

**4167u.**

Repealed, see Supplement 1913.

**4167z(12). Application of act.**

This act shall apply to Guilford county and to any other county of the state of North Carolina complying with the conditions herein required of Guilford county: *Provided*, that the amount annually set aside out of the public school fund by any county for maintenance of said farm-life departments shall not operate to increase the amount to which said county would have been entitled from the State equalizing fund if said apportionments for farm-life departments had not been set aside; and said apportionments shall be included in the necessary expenses for a four months' school term for which a special tax, if necessary, must be levied under chapter thirty-three of the Public Laws of one thousand nine hundred and thirteen. The board of county commissioners of any county is hereby authorized to provide out of the funds for necessary county expenses the funds required under section four of chapter four hundred and forty-nine of the Public Local Laws of one thousand nine hundred and eleven for the establishment and maintenance thereunder of farm-life departments in public high schools, and to in-



clude the same in the annual levy for necessary county expenses. (P. L. L. 1911, c. 449, s. 12; 1913, c. 105; 1915, c. 236, s. 7.)

**4168.**

Amended, see Supplement 1913.

**4169.**

Amended, see Supplement 1913.

**4171.**

Amended, see Supplement 1913.

**4171b. Licensing of business colleges or commercial schools.**

1. Before any business college or commercial school shall receive or solicit students, or open any business school for the purpose of giving instruction in this State, said school or college shall first secure a license from the State Board of Examiners to the effect that it has complied with the requirements of this act, which license shall be issued by the State Board of Examiners upon the payment of an annual fee of ten dollars.

2. Before any such business college or commercial school shall be entitled to receive such license it shall file with the State Board of Examiners a report setting forth:

(1) That it is the owner or lessee of suitable building or rooms for the conduct of it work.

(2) That it has acquired suitable equipment for the courses given by the school.

(3) That the said school has secured a faculty of teachers whose training has not been less than that required of teachers engaged in similar work in public schools of the State.

(4) That said school or college has adopted an approved course of study which includes at least the following subjects: bookkeeping, commercial law, commercial arithmetic, English, commercial correspondence, business writing, shorthand and typewriting.

(5) That the owner and manager of said school or college shall further file a certificate signed by the county superintendent of public instruction and the chairman of the county board of education of the county in which the school is situated to the effect that the owner or manager of such school or college after investigation, has shown satisfactory evidence of his or her efficiency and good moral character for fair and honest dealings with their students and the public.

3. The institutions securing license under this act shall file with the State Board of Examiners copies of all advertising literature, including catalogue, pamphlets, circulars, etc., and an annual report on or before the first day of July of each and every year.

4. Any person who shall open or conduct any business college or commercial school within this State without having first procured the license herein provided for shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned at the discretion of the court.

5. The Superintendent of Public Instruction is authorized to furnish all necessary blanks for reports and licenses provided for under the provisions of this act and all funds received from the license tax herein provided for shall be paid to the State Treasurer for the expenses of the State Board of Examiners.

6. The provisions of this act shall apply to all existing chartered business colleges and commercial schools and all other business colleges and commercial schools now conducted or to be hereafter conducted in this State. (1915, c. 276.)

**4172. How established; duties of school officials; manager appointed.**

Whenever the patrons and friends of any free public school in which a library has not already been established by aid of the state shall raise by private subscription and tender to the treasurer of the county school fund for the establishment of a library to be connected with such school the sum of ten dollars, the county board of education shall appropriate, from the general county school fund the sum of ten dollars for this purpose and shall appoint one intelligent person in the school district the manager of such library. The county board shall also appoint one competent person well versed in books to select books for such libraries as may be established under these provisions from lists of books approved by the state superintendent of public instruction. *Provided*, that after any school district shall have had a library for ten years or longer under the provisions of this section, said school district shall be entitled to receive a second library in accordance with the foregoing provisions of this section. (1915, c. 236, s. 1d.)

**4179.**

Amended, see Supplement 1913.

**4199.**

Amended, see Supplement 1913.

**4202. Incorporated.**

There shall be maintained a school for the white deaf children of the state which shall be a corporation under the corporate name of The North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. (1915, c. 14.)

**4202a. Name changed.**

Wherever the words "and dumb" appear in any laws or clauses of laws affecting the North Carolina School for the Deaf, the same shall be stricken out.

The North Carolina School for the Deaf shall be classed and defined as an educational institution. (1915, c. 14. In effect February 3, 1915.)

**4204. To educate pupils; who admitted to.**

The board of directors shall, according to such reasonable regulations



as it may prescribe, on application, receive into the school for the purposes of education all white deaf mutes resident of the state not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of eight and twenty-three years. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the state and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, house-keeping and such arts and industrial branches as may be useful to them in making themselves self-supporting. (1915, c. 14.)

The editor of Pell's Revisal incorporated into this section a portion of Chapter 929, of Laws 1907. It will be found herein as Section 4204a.

#### **4204a. Admission limited to residents of North Carolina.**

1. Only white deaf children between the ages of eight years and twenty-three years of age, who have been *bona fide* citizens of North Carolina for a period of two years, shall be eligible to and entitled to receive free tuition and maintenance in the North Carolina School for the Deaf and Dumb.

2. The board of directors may fix charges and prescribe rules whereby non-resident deaf children may be admitted: *Provided*, that said admission of non-residents shall not in any way prevent the attendance of any eligible deaf child, resident of North Carolina. (1907, c. 929.)

#### **4206a. White deaf children to attend school.**

1. Every deaf child of sound mind in North Carolina shall attend a school for the deaf at least five school terms of nine months each, between the ages of eight years and fifteen years.

2. Parents, guardians or custodians of a deaf child or deaf children between the ages of eight and fifteen years shall send said child or children or cause to be sent to some school for the instruction of the deaf at least five terms or sessions of nine months each, between the ages of eight years and fifteen years.

3. Parents, guardians, or custodians of any deaf children between the ages provided in section two of this act, failing to send said deaf child or deaf children to some school for instruction as provided in this act, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court for each year said deaf child is kept out of school between the ages herein provided: *Provided*, that said parents, guardians or custodians may elect two years between said ages of eight and fifteen years that a deaf child or deaf children may remain out of school: *Provided, further*, that this section shall not apply to or be enforced against the parent, guardian or custodian of any deaf child until such time as the Superintendent of any school for the in-

struction of the deaf, by and with the approval of the executive committee of such institution, shall, in his and their discretion, serve written notice on such parent, guardian or custodian directing that such child be sent to the institution whereof they have charge.

4. It shall be the duty of the school census-taker to report name, age and sex of each deaf child in his district, and name of parents, guardians or custodian, and their post-office address, to the County Superintendent of Education, who shall send said report of names and addresses to the Superintendent of the North Carolina School for the Deaf, located at Morganton, N. C. That said census-taker or County Superintendent failing to make reports as provided in this act shall be fined five dollars (\$5) for each white deaf child not so reported.

5. Said fine as provided in section three (3) of this act, and said fine of five dollars (\$5) provided in section four (4) of this act, when collected, shall be paid to the public school fund of the county in which such child lives. (1907, c. 1007; 1915, c. 14.)

**4206c. Changing the name of the North Carolina School for the Feeble Minded and providing for admission and discharge of children from said school.**

1. The name of the North Carolina School for the Feeble Minded located near Kinston, North Carolina, and established by an act of the General Assembly of North Carolina, session of one thousand nine hundred and eleven, and known as "The North Carolina School for the Feeble Minded," shall be and is hereby changed to "The Caswell Training School"; and under such name and style shall be and remain a corporation invested with all property and rights of property heretofore held under the former name, and under this name may acquire and hold all such property as may be devised, bequeathed or conveyed to it, and further may use all the authority, privileges and possessions that said corporation exercised under the former title and name, and shall be subject to all legal liability outstanding against it under the former title and name.

2. Hereafter there shall be received into The Caswell Training School, subject to such rules and regulations as the board of trustees may adopt, feeble minded and idiotic boys and girls between the ages of six and twenty-one years, and feeble minded women between the ages of twenty-one and thirty years who are not pregnant or helpless, and are not affected with any contagious or communicable disease. And the person or persons making application for admission of said feeble minded or idiotic person shall first obtain the written approval of the board of county commissioners of the county wherein said feeble minded or idiotic person has a legal residence.

3. Said applications for the admission of a child between the ages of six and twenty-one years shall be made, first, by the father, if the father and mother are living together; second, by the one having custody of the child, if the father and mother are not living together; third, by



a guardian duly appointed; fourth, by the superintendent of any county home, or by the person having the management of any orphanage, association, charity, society, children's home workers, ministers, teachers, or physicians, or other institutions where children are cared for. Under items third and fourth, consent of parents, if living, is not required.

4. In case of females between the ages of twenty-one and thirty years, any responsible person residing in said county may file in the office of the clerk of the superior court of said county affidavit stating that some woman of said county is not being properly maintained or cared for by those having such person in charge; that such woman is feeble minded, and is over twenty-one and under thirty years, and is in good bodily health, is not helpless, is not afflicted with any chronic or contagious disease; that she is a legal resident of the State and county where the application is filed, together with such other statements as may be necessary to show that she is a proper person to be admitted to such institution, and that her admission thereto would be in conformity to the rules and regulations established by the board of trustees of said institution for the admission and care of such person. Upon the filing of said affidavit in the office of the clerk of the superior court of the county in which such applicant has a legal settlement, by the proper person, the clerk of said court shall issue a summons to such person named in said application or petition, requiring her to be and appear before said court, or the judge thereof, at some time to be fixed by said clerk, not more than ten days thereafter, and the judge or clerk of said court shall, as soon as convenient, pass upon said application or petition, and it shall be the duty of said court to examine such witnesses as may be necessary, among whom shall be at least one physician, to prove the truth or falsity of the statements in said application or petition. And if the court finds that each and all of the allegations contained in said application or petition are true, and that said person is a proper person to be cared for in said institution, it shall be its duty to make an order committing the care and custody of said person to said institution. And it shall be the duty of the clerk of said court to make a certified copy of said application or petition and the finding and judgment of said court, and transmit the same together with a statement of such facts as can be ascertained concerning the personal and family history of such person, to the superintendent of said institution at Kinston, North Carolina. The costs of said proceedings shall be allowed and paid by the board of county commissioners of said county.

5. Upon receipt of such order of commitment, it shall be the duty of the superintendent of said institution at once to consider said application and to determine whether or not said person shall be admitted to said institution, and to notify said clerk of said court of his decision, and if there is room for any more inmates, or as soon thereafter as there shall be room in said institution to notify the clerk of the said court

that such person will be received in said institution. That with such notice said superintendent shall send a list of such clothing as shall be prescribed by the board of trustees of said institution, and a blank form of certificate of health and freedom of exposure to contagious disease at such time. In case the parent or custodian of such person shall be financially unable to furnish the clothing as required, the said clerk shall procure such clothing at a cost not to exceed twenty dollars (\$20), and the payment for same shall be made out of the county treasury by board of commissioners upon the certificate of the clerk of the court.

6. Upon receiving notice that such person can be admitted to such institution, the clerk, shall order the parents, custodian or applicant to convey such person to said institution without expense to the institution or the county. In case such parent, custodian or applicant is financially unable to bear such expense, said clerk shall cause said person to be conveyed to said institution in the same manner and in accordance with the same forms as are now provided by law for the transfer of patients to insane hospitals, so far as they are applicable. And when any child or person, who is or has been an inmate of said institution, is dismissed or discharged from said institution in accordance with the rules and regulations of said institution, the parent or guardian of such child or person shall come, or send some responsible person, to receive said child or person and convey same to his or her legal residence, without cost to said institution; and in case the parent or guardian of said child or person is wholly unable to bear such expense, then the commissioners of said county shall allow said expense.

7. In case the parents of a child between the ages of six and twenty-one are wholly unable to bear the expense of furnishing the clothing of said child as required by the rules and regulations of the board of trustees of said school, or of furnishing the money for transportation of such child to said school, it shall be the duty of the county from which the child is sent to bear such cost, in the manner provided for adults in sections six and eight of this act.

8. The county commissioners of the county of which any adult inmate of this institution is a resident shall pay or cause to be paid the actual annual cost of the clothing of said adult inmate at the institution, a statement of which shall annually, on or before the first Monday in September of each year, be submitted by the superintendent of the said institution to said board of commissioners, and the said school is hereby authorized to bring suit against any board of commissioners refusing or failing to pay for said clothing, and to collect the payment for same by law: *Provided, further*, that the county commissioners of any county shall be authorized to demand and collect by law said amount from any parent or guardian of said child that in the opinion of said board of county commissioners is able to pay for the same.

9. Any pupil of said school may be discharged or returned to his or



her parents or guardian when, in the judgment of the trustees, it will not be beneficial to such pupil, or will not be for the best interests of said school to retain the pupil therein. (1915, c. 266.)

**4221. Establishment and name.**

A college of agriculture and mechanical arts is hereby established for the colored race to be located at some eligible site within this state. Such institution shall be denominated The Negro Agricultural and Technical College of North Carolina. (1915, c. 267.)

**4228g.**

For notes on this section see Supplement 1913.

**4236.**

Amended, see Supplement 1913.

**4241.**

Amended, see Supplement 1913.

**4252.**

For notes on this section see Supplement 1913.

**4257.**

Amended, see Supplement 1913.

**4286a.**

The appropriation provided by this act has been increased to \$4,000. 1915, c. 161.

**4288.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4289.**

Amended, see Supplement 1913.

**4292a(1). Primary elections; date; offices affected.**

On the first Saturday in June next preceding each general election to be held in November for State officers, representatives in congress, district officers in districts composed of more than one county and members of the general assembly of North Carolina or any such officers, there shall be held in the several election precincts within the territory for which such officers are to be elected a primary election for the purpose of nominating candidates of each and every political party in the State of North Carolina for such offices as hereinafter provided; and at such primary election next preceding the time for the election of a senator for this State in the congress of the United States there shall likewise be nominated the candidate of each political party in this State for such office of United States senator. (1915, c. 101, s. 1.)

**(2). Presidential primaries; delegates bound thereby.**

On the first Saturday in June of each year in which presidential elec-

tors are to be elected every person who may be entitled to register and vote in the general election to be held in the State of North Carolina for presidential electors may by party primary ballot express his choice for the nominees of his party respectively for president and for vice-president of the United States; and all delegates at large from the State of North Carolina to the national convention of such political party and the delegates from each congressional district shall be bound by the majority of the votes which may be cast for any such persons for the respective nominations, and, in the event that there is no majority vote, the plurality of such votes shall govern in each of the congressional districts and in the State at large respectively so expressed by the respective political party primaries in the State and in the respective congressional districts: *Provided*, that the State board of elections shall make such other and necessary rules and regulations for carrying out the provisions of this act as may be proper, such rules and regulations not to be in conflict with the letter and spirit of this act. (1915, c. 101, s. 2.)

**(3). Conduct of primaries; laws applicable.**

Said primary elections shall be conducted, as far as practicable, in all things and in all details in accordance with the general election laws of this State, unless otherwise provided by this act, and all the provisions of chapter ninety of the Revisal of one thousand nine hundred and five and amendments thereto, together with any other sections of said Revisal and amendments thereto and other laws now in force or hereafter enacted which govern elections not inconsistent with this act, shall apply as fully to such primary elections and the acts and things done thereunder as to general elections, unless different provision is made in this act; and that all acts made criminal if committed in connection with a general election shall likewise be criminal with the same punishment, when committed in a primary election held hereunder. (1915, c. 101, s. 3.)

**(4). Meetings of state board; appointment, etc., of county boards; registrars and judges; primary fees.**

On the tenth Saturday preceding each State or district primary election, the State board of elections shall meet in the city of Raleigh and appoint the county boards of elections for the several counties; and on the seventh Saturday preceding the time for holding each such primary election the county board of elections for each of the several counties shall meet at the courthouses of their respective counties and organize in the same manner as is now or may hereafter be provided by law; and on the sixth Saturday preceding such primary election the county boards of elections shall appoint a registrar and judges of election for each election precinct in the manner now or hereafter prescribed by law, and the registrars and judges so appointed shall likewise serve in the general election following their appointment, unless for good cause made to



appear to the respective county boards of elections others shall be appointed by them: *Provided*, that said registrars and judges shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths. Candidates for the following named offices shall at the time of filing said notices of candidacy, pay the following named sums to the State board of elections, to be paid into the State treasury; for any congressional office, except as herein-after named, the sum of fifty dollars; for judge of the superior court, solicitor of any judicial district or any State officer, the sum of twenty dollars; and for State senator, the sum of five dollars. Candidates for any county office shall at the time of filing their notices of candidacy pay to the county board of elections of the county in which they reside, to be paid into the treasury of such county, the sum of five dollars; except candidates for surveyor, coroner, and county commissioners, who shall pay into the county treasury the sum of one dollar; *Provided* constables and township officers shall not be required to pay any fee whatever. (1915, c. 101, s. 4.)

**(5). Registration before primaries; new registration; political affiliation to be stated; parties entitled to vote in primaries.**

The regular registration books shall be kept open before the primary election in the same manner and for the same time as is now or may be hereafter prescribed by law for general elections, and electors may be registered for both primary and general elections: *Provided*, that at the first primary election held under the provisions of this act new registration books shall be provided, in which on each page there shall be a column headed with the language, "With which political party are you affiliated?" and it shall be the duty of each registrar to transcribe the name of all formerly registered voters in his precinct on to such a book for such compensation as the State board of elections shall indicate, to be paid by the county; and when such voter, whose name has been thus transcribed, appears for the first time to vote in a primary provided for by this act, he shall answer such questions stated above, and it shall be the duty of the registrar and judges of elections to write opposite the name of each voter in such primary his answer to such question; and as to all other persons not already registered who shall register to vote in a party primary after the ratification of this act, it shall be the duty of the registrar, when such person registers, to propound to him the same question and to have the same answered, and write the answer of such elector on such book in such column.

No person shall be entitled to participate or vote in the primary election of any political party unless he be a legal voter, or shall become legally entitled to vote at the next general election, and has first declared and had recorded on the registration book that he affiliates with the political party in whose primary he proposes to vote and is in good faith a member thereof, meaning that he intends to affiliate with the

political party in whose primary he proposes to vote and is in good faith a member thereof. (1915, c. 101, s. 5.)

**(6). Notice of candidacy; pledge to abide result.**

Every candidate for selection as the candidate of any political party for any office provided to be voted for in any primary election by this act other than candidates for nomination for the State senate in districts composed of only one county, for the house of representatives or for the county offices hereinafter referred to, shall file with the State board of elections, at least six weeks before such primary is to be held, a notice stating his party affiliation, the office for which he is a candidate, and a pledge to abide by the result of and to support the party candidate nominated in such primary by the political party with which he affiliates; and that every candidate for selection as the candidate of any political party in the State of North Carolina for the State senate in a district composed of only one county and for the house of representatives and the county offices hereinafter referred to, shall file with the appropriate county board of elections, at least two weeks before such primary election is to be held, a like notice and pledge. (1915, c. 101, s. 6.)

**(6½). Expense statements required before and after primary.**

It shall be the duty of every person who shall be a candidate in any primary election for the nomination of any political party for a State or district office or for the State senate in a district composed of more than one county to file under oath ten days before such primary election with the Secretary of State and of every candidate for nomination as a candidate for State senator in a district composed of only one county and for the house of representatives to so file with the clerk of the superior court of the county in which he is such candidate an itemized statement of all moneys spent by him and which he knows to have been spent by any one for him, as also to file under oath within twenty days after such primary with the Secretary of State or clerk of the superior court, as above provided, an itemized statement of all money or other things of value that he has spent and knows to have been spent by anyone else in his behalf, and all money that has been contributed to him directly or indirectly by any person or corporation and the names of the contributors; and further, that he has neither directly nor indirectly promised to give anything of value to any person for his support in such primary and that he has not promised to support any person in return for support. And it shall be the duty of every candidate for selection as a candidate for a county office to file a like statement under oath with the clerk of the superior court of the appropriate county at the time hereinbefore prescribed for notice to be filed by the candidates for nomination for State and other offices; and failure to file any statement prescribed by this section shall constitute a misdemeanor: *Provided*, that with respect to the selection of a candidate for the State senate the



provisions of chapter one hundred and ninety-two, Public Laws of one thousand nine hundred and eleven [sec. 4398a, Gregory's Supplement], shall remain in force, except that such candidate shall be selected in a primary as authorized by this act in the county entitled to name the candidate for that election, and where such candidate is named by one county the same provision as to notice and statement of moneys spent shall apply as if there were only one county in the district. (1915, c. 101, s. 6½.)

**(7). Proportion of expense to be borne by state and counties.**

The expense of printing and distributing the poll books, blanks, tickets for all State and district offices, and the per diem and expenses of the State board of elections while engaged in the discharge of the duties imposed by this act, shall be paid by the State; and the expense of printing and distributing the tickets for all county offices, including tickets for candidates for representative in the general assembly and the per diem and expenses of the county board of elections and the registrars and judges of election while engaged in the discharge of the duties imposed by this act, shall be paid by the counties, as is now provided by law to be paid for performing the duties imposed in connection with other elections. (1915, c. 101, s. 7.)

**(8). Notices of candidacy certified; contents of ballots; printing and distribution; failure of election officials to perform duty.**

When the time for filing said notices by candidates for nomination shall have expired, the chairman of the State board of elections shall within three days thereafter certify the facts as to such notices as have been filed with it to the Secretary of State; and at the same time he shall certify to the appropriate county boards of elections the facts as to such notices as have been filed with said State board of elections by candidates for nomination for the State senate in districts composed of two or more counties; and said chairman, acting under the direction of the State board of elections and under such rules and regulations as may be prescribed by it for the purpose of carrying out the provisions of this act, shall, without delay, at the expense of the State, cause a sufficient number of official ballots to be printed for each political party having candidates to be voted for in the primary and distributed to the chairman of the county boards of elections in the several counties, upon which said ballot shall appear the names of candidates who shall, under the provisions of this act, have filed notice of their candidacy and otherwise complied with the requirements of this act, except candidates for offices ballots for which are herein provided to be printed by the several county boards of elections, so that such ballots shall be received by the respective county boards of elections at least ten (10) days before the date of holding such primaries. The expense of printing and distributing such official ballots shall be paid by the State treasurer out of

funds not otherwise appropriated, upon the warrant of the chairman of the State board of elections. Said ballots so printed by the State board of elections shall be for each of the several political parties in the State, as hereinafter defined and described, and the names of the respective parties and the candidates shall be printed on the ballots prepared for the respective parties with which the candidates affiliate, and upon the ballots the office for which each aspirant is a candidate shall be indicated. At least six days before the primary election the chairman of the county boards of elections shall distribute the official ballots to the several registrars in their respective counties, and take a receipt therefor, and the registrars shall have them at the several polling places for the use of the electors at the time of holding the primary. Any election or other officer who shall accept appointment and who shall, without previously resigning, fail to perform in good faith the duties prescribed by this act, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1915, c. 101. s. 8.)

**(9). Ballots; only official voted; kinds; specifications for.**

There shall be voted\* in primary elections only the official ballots furnished to the chairman of the county boards of election and by them to the registrars; and if other ballots be voted in a party primary, they shall not be counted. There shall be as many kinds of official ballots as there are political parties, members of which have filed notice of their candidacy for primary elections, and all ballots shall be printed on white paper in black ink and shall be of the same size and style of printing; and the name of the political party whose ballot it is shall be printed in bold face type at the top of the ballot. (1915, c. 101, s. 9.)

**(10). Manner of indicating choice; names of opposing candidates to alternate.**

Each elector wishing to participate in such primary election shall be permitted to vote for his choice for the nomination for president of the United States by name, to be inserted in the ballot arranged therefor, and to vote for his choice of candidates for the nomination for all other offices provided for by and subject to the provisions of this act, including candidates for the United States senate, by making a cross mark in the small squares opposite the names of the respective candidates for whom he elects to vote. It shall be the duty of the board of elections having in charge the duty of printing the ballots for primary elections to be held under the provisions of this act to so print the ballots that the names of the opposing candidates for any office shall as far as practicable, alternate in position upon the ballot to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of



ballots and distribute the said ballots, when so printed impartially and without discrimination. (1915, c. 101, s. 10.)

**(11). Ballot boxes; conduct of election; registration at election; observation of conduct of election; polling books filed; judges to inform voters.**

There shall be provided for each election precinct at the expense of the respective counties three ballot boxes, labeled respectively "National Primary Box," "State Primary Box," and "Legislative Primary Box" for each political party; in the first whereof shall be deposited all ballots for President and Vice-President of the United States and members of Congress; in the second whereof shall be deposited all ballots for State and district offices other than senatorial districts; and in the third whereof shall be deposited all ballots for members of the General Assembly. When an elector offers himself and expresses the desire to vote at a primary held under this act, he shall declare the political party with which he affiliates and in whose primary he desires to vote, as hereinbefore provided, and he shall then be furnished by the registrar ballots, as desired by him, of the political party with which he affiliates, which he may vote, and he shall not in such primary be allowed to vote a ticket marked with the name of any political party of which he has not declared himself to be a member as defined in this act; but any one may at any time any elector proposes to vote challenge his right to vote in the primary of any party upon the ground that he does not affiliate with such party or does not in good faith intend to support the candidates nominated in the primary of such party, and it shall be the duty of the registrar and judges of election upon such challenge to determine whether or not the elector has a right to vote in said primary: *Provided*, that he may vote for candidates for all or any of the offices printed on such ballot, as he shall elect, and he shall be required to disclose the name of the political party printed thereon and no more. He may in the manner hereinbefore prescribed mark such names as he desires, and these and only these shall be counted as being voted for by him, and he shall have the right to so vote for only one candidate as his choice for each office. If he be a qualified elector and has elected to vote in the primary of a party of which he has declared himself to be a member, as provided in this act, he may deposit his ballots in the proper ballot boxes, or he may permit the registrar or a judge of election to so deposit them for him. Any person who has become of the age of twenty-one years between the time when the books closed for registration and the day of the primary election, and who is otherwise a qualified elector, and who desires to register and vote as a member of a political party, may do so in the manner herein provided. At the time of voting the name of the voter shall be entered on a primary polling book to be provided and kept for the purpose, under rules prescribed by the State Board of Elections, which said book shall be provided at the expense

of the State for the first election held under this act and subsequently at the expense of the several counties, and upon said book shall be entered opposite the name of such voter and in proper column provided for the purpose the name of the political party whose ticket he shall have voted, and said books shall be filed for safe keeping until the next election in the clerk's office of the county in which the ballots are so cast. It shall be the duty of the county board of elections and of the judges and registrar in each precinct to make all necessary arrangements by providing a proper number of places in each precinct whereby each voter shall have an opportunity, both at all primary and all general elections, to arrange his ballot in secret and without interference from any other person whatsoever; and it shall be the duty of the judges of election and registrars holding primary and general elections to give any voter any information he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and, in the response to questions asked by him, they shall communicate to him any information which he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and, in response to questions asked by him, they shall communicate to him any information necessary to enable him to mark his ballot as he desires. At the written request of the chairman of any political party of any county, the judges and registrar of any precinct shall designate the name of some elector in each precinct, if there be such elector who affiliates with such political party, who shall be furnished the opportunity to observe the method of holding such primary election; but such elector shall in no manner interfere with the method of holding such election or interfere or communicate with or observe any voter in casting his ballot, but shall make such observation and notes of the manner of holding such election and the counting of the ballots as he may desire: *Provided*, nothing herein contained shall be construed to prevent any elector from casting at the general election a free and untrammelled ballot for the candidate or candidates of his choice. (1915, c. 101, s. 11.)

**(12). Ballots to be counted and result certified.**

When the polls have been closed, the primary ballot boxes shall be opened in the presence of the registrars and both judges of election at the several precincts and such electors as may desire to be present: *Provided*, the registrars and judges may fix such space as they may consider reasonable and necessary to enable them to count the ballots. The ballots of each of the several parties in the boxes in each precinct shall be counted and bound in separate packages and the result shall be certified to the proper county board of elections and by them to the State Board of Elections upon blanks to be provided by the State Board of Elections at the expense of the State within the time and, as near as



may be, in the manner provided for the certification of the result of general elections. (1915, c. 101, s. 12.)

**(13). Names printed on official ballot; sole candidate declared nominee.**

Only those who have filed notice of their candidacy and who shall have complied with the requirements of law applicable to candidates before primaries with respect to such primary elections shall have their names printed on the official ballot of their respective political parties. In all cases where only one aspirant for nomination for a particular political office to be voted for by his political party on the State or district ballot or for the State Senate in districts composed of two or more counties shall have filed such notice, the board of elections of the State shall, upon the expiration of the time for filing such notices, declare him the nominee of his party, and his name shall not therefore be placed on the primary ballot, but shall be placed on the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 13.)

**(14). Primaries for county offices; requirements for candidacy.**

At the time of holding primary elections for State officers as hereinbefore provided there shall likewise be held primary elections for the nomination of the candidates of the several political parties in the State for county offices; and no one shall be voted for in such primary elections for the nomination of candidates for county offices unless he shall have filed a notice with the appropriate county board of elections and shall have taken the pledge required of candidates filing notice with the State Board of Elections, as hereinbefore provided, and shall have otherwise complied with the requirements applicable to such candidates for nomination for State offices, except in so far as such requirements are modified by the provisions of this act with reference to candidates for primary nominations for county offices. (1915, c. 101, s. 14.)

**(15). State board to furnish notices of candidacy; official ballots for county offices.**

The State Board of Elections, prior to the time fixed by law for the appointment of registrars and judges of primary elections, shall prescribe, print, and furnish to the several county boards of elections a sufficient number of notices to be filed by candidates desiring to be voted for for nomination for county offices, which said notices shall be substantially the same in form as those required to be filed by candidates for primary nomination for State offices as hereinbefore provided; and the several county boards of elections shall have printed and shall provide official ballots for county offices similar in form and otherwise to the ballots hereinbefore provided for for State officers, and shall distribute the same to the several precincts in the manner and at the time hereinbefore prescribed in the case of State offices. (1915, c. 101, s. 15.)

**(16). Voting in primaries for county officers; returns.**

In primary elections for the selection of candidates for county offices the voting shall be done in the manner hereinbefore prescribed for primary elections for State offices, and all of the provisions herein contained governing primary elections for State offices shall apply with equal force to primary elections for county offices when not inconsistent with other provisions herein with reference to such primary elections for county officers; and that the returns in such primary elections for county officers shall be certified to the appropriate county board of elections, which shall declare and publish the results. (1915, c. 101, s. 16.)

**(17). Ballots for General Assembly and county officers.**

The several county boards of elections shall prepare, print, and distribute the ballots for candidates for nomination as members of the General Assembly, and on the same ballot of each party shall be printed the names of the candidates for nomination for the several county offices, and such ballots shall be distributed to the several registrars and judges of elections at the same time that the ballots for State officers are required to be distributed under the provisions of this act; and said county boards of elections shall take receipts therefor, and the several registrars shall have such ballots at their respective polling places for the use of the electors at the time of holding the primary. (1915, c. 101, s. 17.)

**(18). Legislative primary box.**

All ballots for nominations for county officers shall be deposited in the box labeled "Legislative Primary Box" hereinbefore provided for, which box, in addition to bearing the label "Legislative Primary Box," shall also immediately thereunder be labeled "County Primary Box," (1915, c. 101, s. 18.)

**(19). Sole candidate declared nominee.**

In all cases where only one aspirant for nomination by the party with which he affiliates for the State Senate in districts composed of only one county or for the House of Representatives of the General Assembly or for a county office shall have filed the notice of candidacy in this act required, the county board of elections shall, upon the expiration of the time fixed for filing such notice, declare him the nominee of his party, and his name shall therefore not be placed on the primary ballot, but shall be placed upon the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 19.)

**(20). Primaries for township and precinct officers.**

The several county boards of elections are hereby given authority to provide for holding in their respective counties primary elections for the choice of candidates for the nominations for township and precinct



offices and to prescribe and fix the rules and regulations under which the same shall be held; and the expenses thereof shall be paid by the several counties. (1915, c. 101, s. 20.)

**(21). Returns; custody and preservation; opening boxes.**

The registrar and judges of election at each precinct in the State of North Carolina shall certify upon blanks prepared and printed by the State Board of Elections and distributed through the county board of elections to the election officers of each of the several precincts the result of the primary election of each precinct; and there shall be made by the judges of election and registrar at each precinct two copies of their returns, one copy of which shall be filed by them with the clerk of the court of their county for public inspection and one shall be filed with the county board of elections to be kept on file by it; and it shall be the duty of the judges and registrars to preserve and keep for six months after each election the original ballots cast at such election, which ballots, after being counted, shall be placed in bundles, a separate and distinct bundle to be made of the ballots of each and every political party cast in each of the boxes, and each box in which ballots were cast shall be carefully sealed up before the election officers shall separate, so that nothing put in may be taken from them, and the signatures of the registrar and judges of each precinct shall be inscribed at the same time on a seal placed on each box of the precinct, and no box shall be opened except upon the written order of the county board of elections or a proper order of court. The State Board of Elections, in preparing the printed form for returns to be made by the judges and registrars of the several precincts to the county boards of elections, and in preparing the forms for the returns to be made by the county boards of elections to the State Board of Elections of the result of primary elections, shall prepare them in such form as will show the number of votes cast for each candidate for nomination for office. (1915, c. 101, s. 21.)

**(21½). County boards to tabulate and certify returns.**

The county boards of elections of the several counties shall tabulate the returns made by the judges and registrars of the several precincts in their respective counties with reference to candidates before the primaries, so as to show the total number of votes cast for each candidate of each political party for each office, and, when thus compiled on blanks to be prepared and furnished by the State Board of Elections for the purpose, these returns, in the case of officers other than the State Senate in districts composed of only one county, the House of Representatives and county offices, shall be made out for each county in duplicate and one copy shall be forwarded to the State Board of Elections and one copy shall be filed with the clerk of the superior court of the county from which such returns are made; in the case of member of the State Senate in district composed of only one county, member of the House

of Representatives, and county officers, such returns shall be made out in duplicate, and one copy thereof filed with the clerk of the superior court and one copy retained by the county board of elections, which shall forthwith, as to such last mentioned offices, publish and declare the results. (1915, c. 101, s. 21½.)

**(22). State board to compile and tabulate returns; majority necessary to nominate.**

The State Board of Elections shall compile and tabulate the returns for each candidate for each office for each political party voted for in the primary except in cases in which it is in this act provided that the result shall be declared by the several county boards of election, and if a majority of the entire votes cast for all the candidates of any political party for a particular office shall be for one candidate, he shall be declared by the State Board of Elections the nominee of his political party for such office. (1915, c. 101, s. 22.)

**(23). Returns under oath.**

The chairman or secretary of each of the county boards of elections and the chairman or secretary of the State Board of Elections shall file with all returns and declarations of results of election required by law to be filed by such boards an affidavit that the same are true and correct according to the returns made to them; and a judge of election or registrar shall accompany the precinct returns as to results of primary elections with an affidavit that the same are true and correct, according to the votes cast and correctly counted by them. (1915, c. 101, s. 23.)

**(24). Vote required to nominate; second primary.**

Nominations for President and Vice-President of the United States in the several congressional districts shall be determined by a plurality of the votes cast, and in the case of all other officers mentioned in this act nominations shall be determined by a majority of the votes cast. If in the case of an office other than the offices of President and Vice-President no aspirant shall receive a majority of the votes cast, a second primary, subject to the conditions hereinafter set out, shall be held in which only the two aspirants who shall have received the highest and next highest number of votes shall be voted for: *Provided*, that if either of such two shall withdraw and decline to run and shall file notice to the effect with the appropriate board of elections, such board shall declare the other aspirant nominated: *Provided, further*, that unless the aspirant receiving the second highest number of votes shall, within five days after the result of such primary election shall have been officially declared, file in writing with the appropriate board of elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by such appropriate board. If a second primary be ordered by the State or a



county board of elections, it shall be held four weeks after the first primary, in which case such second primary shall be held under the same laws, rules and regulations as are provided for the first primary, except that there shall be no further registration of voters other than such as may have become legally qualified after the first primary election, and such persons may register on the day of the second primary and shall be entitled to vote therein under the provisions of this act. (1915, c. 101, s. 24.)

**(25). Attorney-General to advise and aid in preparation of ballots, etc.**

In the preparation and distribution of ballots, poll books, forms of returns to be made by registrars and judges, and forms of the returns to be made by the county boards of elections to the State Board of Elections and to be made by the State Board of Elections, and all other forms to be prepared by Attorney-General of the State of North Carolina, and it shall be the duty of the State Board of Elections to call to its aid the Attorney-General of the State of North Carolina, and it shall be the duty of the Attorney-General to advise and aid in the preparation of all such ballots, books and forms. (1915, c. 101, s. 25.)

**(26). Returns, canvass, reports and other acts as under general election law.**

The returns to be made by the registrars and judges as to the results of primary elections, and the canvassing by the county boards of elections of such results and declarations of such results, and the reports to be made by the county boards of elections to the State Board of Elections and other acts and things to be done in ascertaining and declaring the results of primary elections, unless otherwise provided herein, shall be done within the time before or after the primary election, and, as near as may be, under the circumstances prescribed for like acts and things done with reference to a general election, unless such acts and things prescribed to be done within certain times under the general election law shall, with respect to primary elections, be changed by general rules promulgated by the State Board of Elections for what may seem to them a good cause. (1915, c. 101, s. 26.)

**(27). Access to ballot boxes to resolve doubts.**

When, on account of errors in tabulating returns and filling out blanks, the result of an election in any one or more precincts cannot be accurately known, the county board of elections and the State Board of Elections shall be allowed access to the ballot boxes in such precincts to make a recount and declare the results which shall be done under such rules as the State Board of Elections shall establish to protect the integrity of the election and the rights of the voters. (1915, c. 101, s. 27.)

**(28). Form, preparation and distribution of ballots for general elections for state and district offices.**

It shall be the duty of the State Board of Elections, in the preparation of ballots for the general election, to prepare one official ballot for each political party for all State and district officers and distribute such ballots to the several county boards of elections in such time that they will be received at least ten (10) days before the date of the general election, whereupon the several county boards of elections shall distribute such ballots to the several registrars and judges of election in their respective counties, so that they will be received at least three (3) days before the date of the general election; and on the ballot of each political party which shall have nominated candidates in the primary shall be printed the name of such party and under the names of the respective political parties shall appear the offices to be filled by the election and the names of the nominees of each political party for such offices respectively; the expense whereof shall be paid by the State treasurer out of funds not otherwise appropriated, upon warrant of the chairman of the State Board of Election. (1915, c. 101, s. 28.)

**(29). Form, preparation and distribution of ballots for general election for General Assembly and county offices.**

It shall be the duty of the several county boards of elections, in the preparation of ballots for the general election, to prepare one official ballot for each political party for members of the general assembly and county offices and distribute such ballots to the several registrars and judges of election of their respective counties in such time that they will be received by such registrars and judges of election at least three (3) days before the date of the general election; and on the ballot of each political party which shall have nominated candidates in the primary shall be printed the name of such party; and under the names of the respective political parties shall appear the offices to be filled by the election and the names of the nominees; the expense whereof shall be paid by the several counties upon the warrant of the chairmen of the several county boards of elections. (1915, c. 101, s. 29.)

**(30). Names entitled to appear on ballots; non-partisan candidates.**

No name other than the name of the person chosen in the primary shall be printed as a candidate of any political party for any office; but upon the petition of any elector, if filed within the time allowed by law for declaring the result of primary elections, when such petitioner is qualified by law to hold a particular office, that his name be placed on the official ballot for the general elections as a non-partisan candidate for such office, said petition to contain a statement under oath that the person so applying does not affiliate with any political party, it shall be the duty of the State Board of Elections to print the name of such person



as a non-partisan candidate for office: *Provided*, that in addition to said petition there shall be filed with the State Board of Elections and within the same time a petition duly signed by ten per cent of those entitled to vote for the candidate for such office, according to the vote cast in the last gubernatorial election in the political division in which such candidate may be voted for. The State Board of Elections shall prescribe general rules whereby it may be advised as to the authenticity and genuineness of the signatures of such petitioning persons. (1915, c. 101, s. 30.)

**(31). Political party defined.**

The term political party as herein used shall include all political parties having candidates who were voted for for State offices at the general election in nineteen hundred and fourteen and, in addition, any political party which may be declared to be such by a declaration signed by ten thousand legal voters and filed with the State Board of Elections thirty days before the time fixed for candidates for State offices to file notices with said board of their candidacy. (1915, c. 101, s. 31.)

**(32). Tickets and method of voting in general election.**

Opposite the name of each candidate on the general ticket to be voted at the general election shall be a small square, and a vote for any candidate shall be indicated by making a cross mark (thus X) in such square, and no voter shall vote for more than one candidate for any office; but there shall also be a large circle opposite the names of each party's candidates on each ticket and printed instructions on said ticket that a vote in such large circle will be a vote for each and all of the candidates for the various offices of the political party the names of whose candidates are opposite said large circle; and if a voter at the general election indicates by a cross mark in such large circle his purpose to vote the straight or entire ticket of any particular party, his vote shall be counted for all the candidates of such party for the offices for which they are candidates respectively, as indicated on such ticket. (1915, c. 101, s. 32.)

**(33). Vacancies among nominees filled by executive committee.**

In the event that any person who shall have been nominated in any primary election as the candidate of a political party for a State office shall die, resign, or for any reason become ineligible or disqualified between the date of such primary election and ensuing general election, the vacancy caused thereby may be filled by the action of the State executive committee of such political party; in the event of such vacancy in the case of a district office, the same may be filled by the action of the executive committee for such district of such political party; and in the event of such vacancy in the case of a county office, or the House of Representatives or the State Senate in a district composed of only

one county, the same may be filled by the action of the executive committee of the party affected thereby in the county wherein such vacancy occurs. (1915, c. 101, s. 33.)

**(34). Exceptions as to sundry counties; election as to application of act.**

This act shall not apply to nominations for candidates for county offices and members of the House of Representatives, in the following counties providing for a primary with respect to said county officers and members of the House of Representatives in the following counties, to wit: Mecklenburg, Ashe, Alleghany, Beaufort, Davidson, Catawba, Watauga, Sampson, Montgomery, New Hanover, Stanly, Wilkes, Yadkin, Davie, Cabarrus, Gaston, Craven, Halifax, Hyde, Graham, Jones, Hoke, Transylvania, Duplin, Brunswick, Alexander, Harnett, Martin, Northampton, Cherokee, Clay, Macon, Surry, Swain, Stokes, Tyrrell, Madison, Pamlico, Alamance, Gates, Dare, Currituck, Lee, Yancey, Union, Caldwell, Mitchell and Edgecombe: *Provided*, that in any county whose county offices are hereby exempted, if voters in number as great as one-fifth of the total vote cast for governor in such county at the preceding gubernatorial election shall petition the board of county commissioners of such county for an election thereon, it shall be the duty of said board to order an election at the next succeeding general election upon the method of nominating county officers, and member or members of the House of Representatives. At such election those favoring the nomination of county and legislative officers by primary shall cast ballots on which is written or printed "For County Primary"; those opposed shall cast ballots bearing the words "Against County Primary." If a majority of the votes cast in such election shall be "For County Primary," then the provisions of this act shall thereafter apply to such county, and it shall be no longer exempted. Otherwise, such exception shall remain in force. (1915, c. 101, s. 34; 1915, c. 102.)

**(34½). Local laws for certain counties repealed.**

All laws and clauses of laws relating to primary elections in Wake County, in conflict with this act, be and the same are hereby repealed. All local laws regulating primaries as to county or legislative officers in those counties not excepted from the provisions in section thirty-four of this act are hereby repealed. (1915, c. 101, s. 34½.)

**4300.**

Are election officials "officers" or mere holders of "places of trust and profit?" See *S. v. Bateman*, 162 N. C. 588, 77 S. E. 768.

**4305.**

Amended, see Supplement 1913.

When the voters were publicly and formally notified that the election would be held on the specified date, "at the various voting precincts of the county as they are now established," the notice conveyed as full



and ample information as could well be given. *Commissioners v. Trust Co.*, 164 N. C. 301, 80 S. E. 230.

4313.

Amended, see Supplement 1913.

4314.

Amended, see Supplement 1913.

4319.

The failure of the registrar to administer the oath to the elector before registration will not deprive the elector of his right to vote. *Gibson v. Commissioners*, 163 N. C. 510, 79 S. E. 976.

Upon an inquiry as to the true result of an election, it is competent to show that a person registered is not a qualified voter. *Echard v. Viele*, 164 N. C. 122, 80 S. E. 408.

4320.

For notes on this section see Supplement 1913.

4323.

For notes on this section see Supplement 1913.

4345. What ticket to contain.

The state officers, viz.: Governor, lieutenant governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney general, and other state officers not herein mentioned, the justices of the supreme court and the judges of the superior court and United States senators shall be voted for on one ballot; members of Congress on one ballot; presidential electors on one ballot; solicitors, members of the general assembly, clerk of the superior court, treasurer, register of deeds, surveyor, coroner, sheriff, county commissioners, tax collector, and every other officer elected by the voters of the county, shall be voted for on one ballot. All officers elected by the voters of a township shall be voted for on one ballot. (1915, c. 121.)

4347.

The return of the poll holders of the result is *prima facie* evidence of its correctness. *Echard v. Viele*, 164 N. C. 122, 80 S. E. 408.

For additional notes on this section see Supplement 1913.

4348.

For notes on this section see Supplement 1913.

4349.

Amended, see Supplement 1913.

4350.

For notes on this section see Supplement 1913.

4351. What returns placed on same abstract.

The abstract of votes for each of the following classes of officers shall be made on a different sheet:

1. Governor and all state officers; justices of the supreme court and judges of the superior court and United States senators.
  2. Senators and representatives of the general assembly.
  3. Solicitor.
  4. County officers.
  5. Township officers.
  6. Representative in the Congress.
- (1915, c. 121.)

**4352. Abstract of votes for offices, except county and township, where sent.**

Two abstracts of all votes cast for state officers, representative in Congress, for justices of the supreme court, for judges of the superior court, and for solicitor, and for United States senators, shall be made and signed by the chairman of the board of county canvassers, one of which shall be delivered to the chairman of the county board of elections, one filed with the register of deeds, to be registered in his office, also two separate abstracts of all votes cast for state senators, when the senatorial districts consist of more than one county, one of which shall be filed with the register of deeds to be registered in his office, and the other furnished to the county board of elections or other returning officer. (1915, c. 121.)

**4353.**

Amended, see Supplement 1913.

**4354. Original returns, where filed.**

When the canvass is concluded the board shall deliver the original returns to the clerk of the superior court to be filed in his office. The register of deeds shall also deliver by mail to the secretary of state and to the chairman of the state board of elections, each, one duplicate of the abstract of the votes cast for governor, and all state officers, for justices of the supreme court, judges of the superior court, and solicitor and representative in Congress, and for United States senators. (1915 c. 121.)

**4356.**

For notes on this section see Supplement 1913.

**4363. How returns published and result declared; how tie broken.**

The speaker of the house of representatives, in the presence of a majority of the members of both houses of the general assembly, shall open and publish the returns for governor, lieutenant governor, secretary of state, auditor, treasurer, superintendent of public instruction and attorney general, or other state officers, and United States senators, at twelve o'clock, noon, on the first Tuesday after the organization of both houses of the general assembly. And if for any cause there be no returns from any county of the state, or if any return be defective, a



proper return shall be had in such manner as the two houses in joint session may direct; and in either case the publication of the result may be postponed to such time as the joint session of the two houses may deem best. The person having the highest number of votes for each office, respectively, shall be declared duly elected thereto, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the general assembly. Contested elections shall be determined by a joint vote of both houses of the general assembly in the same manner and under the same rules and regulations as prescribed in cases of contested election of members of the general assembly. (1915, c. 121.)

**4364. Abstract of votes for, how made.**

An abstract of the returns for state officers, and United States senators shall be made by the clerks of the two houses of the general assembly, showing the number of ballots cast for each candidate, the names of all persons voted for, the offices for which they received such votes, and the number of votes cast for each person, and the persons ascertained by the canvass to be elected to the several offices, and said abstract shall be signed by the presiding officers of the two houses and delivered to the secretary of state, who shall record it in the election book kept in his office and then file it. Said abstract shall also be printed in the journals of the two houses, and in the legislative documents. (1915, c. 121.)

**4365. Members of the Senate.**

(Repealed, 1915, c. 121.)

**4366.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4367. When held, for representative.**

The election for United States senators whose terms will expire before the next general election and members of Congress shall be held on the Tuesday next after the first Monday in November, one thousand nine hundred and six, and biennially thereafter, unless Congress shall prescribe a different time for the holding of such elections, and shall be conducted by the officers provided for holding elections of members of the general assembly in this chapter and at the same place. (1915, c. 121.)

**4376a. Petitions to hold elections in regard to assessments.**

In all cases where a petition by a specified number of freeholders is required as a condition precedent to ordering an election to provide for the assessment or levy of taxes upon realty, all residents of legal age owning realty for life or a longer term, irrespective of sex, shall be

deemed freeholders within the meaning of such requirement. (1915, c. 22.)

**4390b. Registration of farm names.**

1. Any owner of a farm in the State of North Carolina may have the name of his farm, together with a description of his lands to which said name applies, recorded in a register kept for that purpose in the office of the county register of deeds of the county in which said farm is located, and such register of deeds shall furnish to such land owner a proper certificate setting forth said name and description of said lands. That when any name shall have been recorded as the name of any farm in such county, such name, or one so nearly like it as to produce confusion, shall not be recorded as the name of any other farm in the same county.

2. No name shall be registered as the name of a farm where such proposed name or one so nearly like it as to produce confusion has been so used in connection with another farm in the same county as to become generally known prior to the ratification of this act, unless the name used has also prior to the ratification of this act become well known as the name of the farm proposed to be registered and in this event two or more farms in the same county may be registered with the same name with some prefix or suffix added to distinguish them.

Before a name shall be registered the clerk shall have publication made at least once a week for four weeks in some secular newspaper published in the county, if one is so published, and if one is not so published, then in one having a general circulation in the county, giving the name of the applicant, the proposed name of registration and a sufficient description to identify the farm and the time of the return and if the owner or clerk knows of another farm in the county of the same or very similar name, a summons shall be served on the owner thereof at least ten days before the return day. On the return day any person, firm or corporation may file claim to the name and the clerk may pass upon the claim and award the name to any party with the right to appeal by the aggrieved party to the superior court within ten days, as in other cases, and on such appeal the judge shall decide the matters unless a jury be demanded by some party.

3. Any person having the name of his farm recorded as provided in this act, shall first pay to the register of deeds a fee of one dollar, which fee shall be paid to the county treasurer as other fees are paid to the county treasurer by such register of deeds: *Provided*, that in counties where the fee system obtains, the fees herein mentioned shall go to the register of deeds of such counties.

4. When any owner of a farm, the name of which has been recorded as provided in this act, transfers by deed or otherwise, the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then, in that event, the



registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance.

5. When any owner of a registered farm desires to cancel the registered name thereof, he shall state on the margin of the record of the register of such name, the following: This name is cancelled and I hereby release all rights thereunder, which shall be signed by the person canceling such name, and attested by the county register of deeds; that for such latter service the county register of deeds shall charge a fee of twenty-five cents, which shall be paid to the county treasurer as other fees are paid to the county treasurer by him.

6. This act shall not apply to counties of Surry, Stokes and Sampson. (1915, c. 108.)

**4398.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4399.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4411.**

Amended, see Supplement 1913.

**4424.**

Amended, see Supplement 1913.

**4433.**

Amended, see Supplement 1913.

**4434a.**

For notes on this section see Supplement 1913.

**(9). County board of health, who constitutes; election county superintendents of health.**

The chairman of the board of county commissioners, the mayor of the county town, and in county towns where there is no mayor the clerk of the superior court, and the county superintendent of schools shall meet together on the first Monday in April, one thousand nine hundred and eleven, and thereafter on the first Monday in January in the odd years of the calendar, and elect from the regularly registered physicians of the county, two physicians, who, with themselves, shall constitute the county board of health. The chairman of the board of county commissioners shall be the chairman of the county board of health, and the presence of three members at any regular or called meeting shall constitute a quorum. The term of office of members of the county board of health shall terminate on the first Monday in January in the odd years of the calendar and while on duty they shall receive four dollars *per diem*, to be paid by the county. The county board of health shall have the immediate care and responsibility of the health interests of

their county. They shall meet annually in the county town, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interest of the county requires it. They shall make such rules and regulations, pay such fees and salary, and impose such penalties as in their judgment may be necessary to protect and advance the public health: *Provided*, that all expenditures shall be approved by the board of county commissioners before being paid. The board of health shall meet on the first Monday of July, one thousand nine hundred and thirteen and thereafter on the second Monday of January, in the odd years of the calendar, and elect either a county physician, whose tenure of service shall be terminable at the pleasure of the county board of health, or a county health officer who shall serve thereafter until the second Monday in January of the odd years of the calendar: *Provided*, that if the county board of health of any county shall fail to elect a county physician or county health officer within two calendar months of the time set in this section, the secretary of the state board of health shall appoint a registered physician of good standing in the said county, to the office of county physician, who shall serve the remainder of the two years, and shall fix his compensation, to be paid by the said county, in proportion to the compensation paid by other counties for like service, having in view the amount of tax collected by said county. (1911, c. 62, s. 9; 1913, c. 181, s. 1; 1915, cc. 214, 233.)

Amended as to Johnston County only. P. L. L. 1915, c. 106.

15. Cited but not construed in *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442.

20. So far as municipal obligation is concerned, the care and support of the indigent and infirm is a matter of statutory provision. *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442.

21. In *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442, the court construes Section 21, Chapter 62, Laws 1911. That section was repealed however (Laws 1911, Chapter 181, Section 9), and this section substituted. See notes to Section 4508.

### (35). Annual appropriation.

For carrying out the provisions of this act thirty thousand (\$30,000) dollars is hereby annually appropriated to be paid by the State Auditor on requisition signed by the Secretary and President of the State Board of Health. (1911, c. 62, s. 38; 1913, c. 181, ss. 9, 14; 1915, c. 167.)

The amending act contains the following provision: "This act shall not be construed to affect the appropriation made for the purpose of collecting vital statistics and enforcing the law in regard thereto."

This amendment was poorly drawn and is inserted only for what it is worth. It strikes out Sec. 14 of Ch. 181, Laws 1913, and inserts the above. The result of this is to make the appropriation available for carrying out the provisions of that chapter. That chapter, however, is only an act amending Ch. 62, Laws 1911.

### 4435-4442.

For notes on these sections see Supplement 1913.



**4444.**

For notes on this section see Supplement 1913.

**4445.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4448.**

For notes on this section see Supplement 1913.

**4450.**

For notes on this section see Supplement 1913.

**4451.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4453a. To prevent blindness in infancy.**

1. It shall be unlawful for any physician to neglect or otherwise fail to instill or have instilled immediately upon its birth in the eyes of the new born babe a suitable amount of a one per cent solution of nitrate of silver.

2. Should any midwife, or nurse or person acting as nurse, having charge of an infant in this State, notice that one or both eyes of such infant are inflamed or reddened at any time within two weeks after its birth it shall be the duty of such midwife or nurse or person acting as nurse, so having charge of such infant, to report the fact in writing within six hours to the health officer, or some qualified practitioner of medicine, of the city or town in which the parents of the infant reside.

3. Every health officer shall furnish a copy of this act to each person who is known to him to act as midwife or nurse in the city or town for which such health officer is appointed, and the Secretary of State shall cause a sufficient number of copies of this act to be printed, and supply the same to the health officer and State Board of Health on application.

4. Any person violating this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than five (\$5) dollars nor more than ten (\$10) dollars. (1915, c. 272. In effect March 9, 1915.)

**4456.**

For notes on this section see Supplement 1913.

**4457.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4467.**

Amended, see Supplement 1913.

**4470a.**

For notes on this section see Supplement 1913.

# 4470c(1). State Board of Dental Examiners created.

The North Carolina State Board of Dental Examiners, heretofore created for the examination of those desiring to obtain a license to engage in the practice of dentistry in this State, shall consist of six members of the North Carolina Dental Society, to be elected by said society at its annual meeting, who shall be commissioned by the Governor and shall hold office as follows:

Two for one year, two for two years, and two for three years, and until their successors are elected, commissioned, and qualified: *Provided*, that this section shall not be so construed as to vacate the office of any member of said board as now constituted and now holding office thereon until the term of office so held shall have expired as now provided by law. *Provided, further*, that the Governor shall issue his commission to said members of said board for the remainder of their terms. The said board shall also have power to fill all vacancies for unexpired terms, the persons so elected to be commissioned by the Governor, and they shall be responsible to said North Carolina Dental Society and the Governor of North Carolina for their acts.

## (2). By-laws and regulations.

Said board shall have power to make by-laws and necessary regulations for the proper fulfillment of their duties under this act.

## (3). Organization; seal; meetings, notice thereof.

The said Board of Dental Examiners shall elect one of its members president, and one secretary-treasurer, and shall have a common seal with the following inscription: "North Carolina State Board of Dental Examiners," and the said board shall meet annually on Monday preceding the time and at the place of the meeting of the North Carolina Dental Society, and shall also meet, if application shall be made for examination, during the month of January following said annual meeting, at a time and place to be selected by said board, and may meet at such other times and places as the said North Carolina State Board of Dental Examiners, or any four members thereof shall agree upon, to conduct the examination of applicants and for the transaction of any other business that may come before it. Notice of said meetings shall be given by advertising for ten days in at least three newspapers published in this State.

## (4). Quorum; powers in making investigations; process.

Four members of said board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for the meeting of said board those present may adjourn from day to day until a quorum is present. The president and, in his absence, the secretary-treasurer of said board shall have power to administer oaths,



issue subpoenas, and send for persons and papers in any hearing, investigation, accusation or other matter coming before said board, and the sheriffs of the several counties or other officers authorized to serve processes shall serve any subpoena or other lawful order issued by the president or secretary-treasurer of said board and shall receive for such service the fees provided by law for like service to be paid out of any funds in the hands of said board; and any person willfully neglecting or refusing to obey any subpoena or lawful order of said board shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned at the discretion of the court.

**(5). Record of licenses; certificate admitted in evidence.**

Said board shall keep a record book in which shall be entered the names and proficiency of all persons to whom license may be granted under this act, the license numbers, and the date of granting of such license, and other matters of record, and the book so provided shall be deemed a book of records, and a transcript of any such entry therein, or a certificate that there is not entered therein the name, proficiency and license number, or date of granting such license of a person charged with a violation of the provisions of this act, certified under the hands of the secretary-treasurer and the seal of the North Carolina State Board of Dental Examiners shall be admitted as evidence in any court of this State when the same shall be otherwise competent.

**(6). Requisites for license; attestation.**

Such board shall grant license to practice dentistry to all applicants who are graduates of a reputable dental institution who shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, and who shall receive a majority of votes of said board upon such proficiency, which license shall be signed by the members of the board conducting said examination, and shall bear the seal of the said North Carolina State Board of Dental Examiners.

**(7). License requisite to practice; examinations for; license obtained by fraud.**

No person shall engage in the practice of dentistry in this State, or attempt to do so after the ratification of this act, without first having applied for and obtained a license for such purpose from the said North Carolina State Board of Dental Examiners, and having registered such license with the clerk of the superior court of each county in which he or she proposes to practice dentistry. This provision applies to all persons whether they have heretofore practiced dentistry or not in this State, except such persons as have been heretofore duly licensed and registered, or who were engaged in the practice of dentistry in this State before the seventh day of March, one thousand eight hundred and seventy-nine, if on or before the twenty-fifth day of February, one thousand, eight

hundred and ninety, such person or persons filed verified statements with the Secretary of the said State Board of Dental Examiners, showing his name, residence, date of diploma or license, or date of commencing the practice of dentistry.

Application shall be made to the said board in writing for an examination in the knowledge and practice of dentistry, and for license. The applicant for examination and license must be of good moral character, at least twenty-one years of age at the time of making the application; and the application of each person must be accompanied by satisfactory evidence to said board that the applicant so applying is a person of good character, has an English education, the standard of which shall be determined by the said Board of Dental Examiners, is a graduate of and has a diploma from a reputable dental college or institution, recognized as such by the said Board of Dental Examiners, or the dental department of a reputable university so recognized by the said Board of Dental Examiners of this State. Examinations must be both written and clinical, and of such a character as to thoroughly test the qualifications of the applicant to practice dentistry, and the said board may, in its discretion, refuse to grant license to any person found deficient in said examination or whom they may find guilty of cheating, deception, or fraud during such examination, or whose English education is found to be defective by said board. And the said board of examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, of gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice dentistry; and any license obtained through fraud or by any false representation shall be void *ab initio* and of no effect.

#### **(8). Registration of license.**

Every person receiving a license to practice dentistry in this State by or from the said State Board of Dental Examiners as is provided in this act, shall, before the beginning of the practice of dentistry, cause said license to be registered in the office of the clerk of the superior court of each county in which such person desires to engage in the practice of dentistry, by appearing before such clerk and filing his license or duplicate thereof showing that he has been examined as to his proficiency in the knowledge and practice of dentistry, and has been licensed as herein provided; and the said clerk of the superior court of each county is authorized to receive a registration fee of fifty (50) cents for each registration, and shall keep a record of the same in a book provided by the county for such purpose.

#### **(9). Display and exhibition of license.**

The license to practice dentistry herein provided for shall at all times be displayed in a conspicuous place in his or her office wherein he or she shall practice the profession of dentistry, and he or she shall, whenever



requested, exhibit such license to any of the members of the said State Board of Dental Examiners or its authorized agent or attorney.

**(10). Examination fees; salaries and expenses; annual report.**

In order to provide the means of carrying out and enforcing the provisions of this act the said Board of Dental Examiners shall charge and collect from each person applying for an examination for license to practice dentistry in this State an examination fee of twenty (\$20) dollars, and in addition thereto a fee of one (\$1) dollar for every annual certificate or license, or duplicate certificate or license, issued by said board, and out of the funds coming into the possession of the said board under the provisions of this act, the members of said board shall each receive as compensation a sum not exceeding ten (\$10) dollars for each day actually engaged in the duties of the office—(the amount of said compensation to be fixed by said board), and all legitimate and necessary expenses incurred in attending meetings of the said board; provided, that the secretary-treasurer of the board shall be allowed a reasonable salary to be fixed by the board and actual necessary expenses incurred in the discharge of the duties of his office; all expenses herein provided for shall be paid out of the funds received by the said board under the provisions of this act; and no part of said expense shall be paid out of the State Treasury. All moneys received in excess of said per diem and allowances and other expenses herein provided shall be held by the secretary-treasurer of said board as a special fund for meeting the other legitimate expenses of said board and for such use as the said board may deem necessary in the enforcement of the provisions of this act; and said board by its secretary-treasurer shall make an annual report of its proceedings to the Governor on or before the twenty-fifth day of February in each year showing all moneys received and disbursed by it pursuant to this act: *Provided*, that any sum in excess of five hundred (\$500) dollars remaining after meeting the per diem and other expenses hereinbefore mentioned shall be turned into the State Treasury to the use of the general school fund of the State.

**(11). Renewal license; cancellation and restoration of license.**

On or before the first day of January of each year every dentist engaged in the practice of dentistry in this State shall transmit to the said secretary-treasurer of the said North Carolina State Board of Dental Examiners his signature and post office address, the number of his or her license, together with a fee of one (\$1) dollar and receive therefor a renewal license. Any license or certificate granted by said board, under or by virtue of this act, shall automatically be canceled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of three months after the thirty-first day of December of each year; provided, any license thus canceled may be restored by the said board upon the payment of five (\$5) dollars if paid within one year

after said cancellation: *Provided*, that any legally practicing dentist in this State who retires from practice may receive license to resume the practice thereof upon application to said board of dental examiners for such license upon payment of ten (\$10) dollars.

**(12). Filing false diplomas or license or forged affidavit.**

Any person filing or attempting to file as his own a diploma, or license of another, or a forged affidavit of identification or qualification shall be deemed guilty of a crime and be punishable upon conviction thereof by imprisonment or fine or both in the discretion of the court.

**(13). Persons regarded as practicing.**

Any person shall be regarded as practicing dentistry within the meaning of this act, who shall diagnose or profess to diagnose, or treat or profess to treat any of the diseases or lesions of the oral cavity, teeth, gums, or maxillary bones, or shall prepare or fill cavities in human teeth, correct malposition of teeth, of jaws, or apply artificial teeth as substitutes for natural teeth, or administer anaesthetics, general or local, or any other practice included in the curriculum of recognized dental institutions or colleges: *Provided*, that nothing in this act shall be so construed as to forbid regularly licensed physicians and surgeons from treating any diseases coming within the province of the practice of medicine: *Provided*, that this act shall not prevent any one from extracting teeth.

**(14). Exemption from jury duty.**

All duly licensed dentists of this State shall be exempt from service as jurors in any of the courts of this State.

**(15). Authentication of license and certificates.**

All licenses and certificates issued by said State Board of Dental Examiners shall bear a serial number, the full name of the applicant, the date of the issuance, the seal of the said board, and be signed by the president and a majority of the members thereof, and be attested by its secretary.

**(16). Practice to be under personal name.**

It shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery as herein defined under the name of any company, association or corporation, and every person practicing or offering to practice dentistry or dental surgery under any other name than his or her own respective name shall be guilty of a misdemeanor.

**(17). License to practitioners from other states.**

The said board of dental examiners may in its discretion issue a license to practice dentistry without an examination other than clinical to a



legal and ethical practitioner of dentistry who removes into North Carolina from another State or territory of the United States, whose standard of requirements is equal to that of the State of North Carolina, and in which he or she conducted a legal or ethical practice of dentistry for at least five years next preceding his or her removal: *Provided*, such applicant shall present a certificate from the dental board or a like board of the State or territory from which he or she removes, certifying that he or she is a legally competent, and ethical dentist, and is of good moral character; and, *Provided*, that such certificate is presented to the said State Board of Dental Examiners within six months of the date of its issuance, and shall be recorded in the county or counties where such person proposes to practice as is provided by this act; and *Provided* that the said board of such other State or territory shall permit in like manner by law the recognition of licenses or certificates issued by the North Carolina State Board of Dental Examiners when presented to such other board by legal practitioners of dentistry from this State, when he or she wishes to remove to or practice dentistry in such other State or territory.

**(18). Certificate for change of residence to another state.**

Any person who is a legal, ethical and competent practitioner of dentistry in this State and of good moral character, and known to the North Carolina State Board of Dental Examiners as such, who shall desire to change his or her residence to any other State or territory or foreign country shall upon application accompanied by a fee of five (\$5) dollars to the said North Carolina State Board of Dental Examiners of this State receive a special certificate over the signature of the president and attested by the secretary-treasurer of said board, and bearing its seal, which shall attest the facts mentioned in this chapter, and give the date upon which he or she was presented with license.

**(19). Fee for license to incoming and outgoing practitioners.**

The fee for issuing a license to a legal practitioner from another State or territory as provided in this chapter, shall be twenty (\$20) dollars, and a fee for issuing a certificate to a legal practitioner in this State desiring to remove therefrom, as provided in the preceding section, shall be five (\$5) dollars. Said fees shall be paid in cash before the license or certificate shall be issued.

**(20). Prescriptions filled.**

Legally licensed druggists of this State may fill prescriptions of legally licensed dentists of this State for any drug necessary for the practice of dentistry.

**(21). Practicing without license or violation of act a misdemeanor.**

If any person shall practice or attempt to practice dentistry in this



State, except extracting teeth, without having first passed the examination and obtained a license and registered the same as is provided in this act, or shall violate any of the provisions of this act for which no specific penalty has been provided herein, he or she shall be guilty of a misdemeanor and upon conviction thereof shall be fined twenty-five (\$25) dollars for the first offense: *Provided*, that if any person, having once been convicted of practicing dentistry contrary to this act, or contrary to the provisions of section three thousand six hundred and forty-two of the Revisal of North Carolina of one thousand nine hundred and five, shall practice or attempt to practice dentistry in violation of the provisions of said section three thousand six hundred and forty-two, or the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof, for the second offense and for each succeeding offense thereafter, shall be fined and imprisoned in the discretion of the court. That each act of dentistry shall be deemed a separate offense and constitute a practice of dentistry in the meaning of this act; and each day that a person shall hold himself or herself out as practicing in any name except his or her own shall be deemed a separate offense. The opening of an office or dental parlor for the practice of dentistry, or the practice of dentistry without opening an office or parlor, or to announce to the public in any way a readiness to do any act or thing defined herein as being dentistry shall be deemed to engage in the practice of dentistry within the purview of this act.

**(22). Grounds for revocation of license; hearing upon accusations.**

Whenever it shall appear to the North Carolina State Board of Dental Examiners that any licensed dentist practicing in the State of North Carolina has been guilty of fraud, deceit, or misrepresentation in obtaining license, or of gross immorality; or is an habitual user of intoxicants or drugs, rendering him unfit for the practice of dentistry, or has been guilty of malpractice, or is grossly ignorant or incompetent, or is guilty of willful negligence in the practice of dentistry, or has been employing unlicensed persons to perform work, which under this act, can only be legally done by persons holding a license to practice dentistry in this State; or of practicing deceit or other fraud upon the public or individual patients in obtaining or attempting to obtain practice; or of false notice, advertisement, publication, or circulation of false claims, or fraudulent misleading statements of his art, skill or knowledge, or of his methods of treatment or practice, or shall be guilty of any offense involving moral turpitude, they shall revoke the license of such person; an accusation may be filed with the secretary-treasurer of the North Carolina State Board of Dental Examiners, charging any licensed dentist with the commission of any of the offenses herein enumerated; such accusation to be in writing, signed by the accuser and verified under oath.

Whenever such accusation is filed, the secretary-treasurer of the said North Carolina State Board of Dental Examiners shall set a day for



hearing, and shall transmit to the accused a true copy of all papers filed with him relating to such accusation, and shall notify in writing the accused that on the day fixed for hearing, which day shall not be less than ten days from the date of such notice, he may appear and show cause, if any, why his license to practice dentistry in the State of North Carolina should not be revoked; and for the purpose of such hearing the said North Carolina State Board of Dental Examiners is hereby empowered to require by subpoena the attendance of witnesses, to administer oaths and hear testimony, either oral or documentary, for and against the accused.

And if, at such hearing of the accused, the North Carolina State Board of Dental Examiners shall be satisfied that the accused has been guilty of the offense charged in the accusation they shall thereupon, without further notice, revoke the license of the person so accused: *Provided*, the accused shall not be barred the right of appeal to the superior courts. (1915, c. 178.)

#### 4480. Requisites for license.

In order to become licensed as a pharmacist, within the meaning of this act, an applicant shall be not less than twenty-one years of age, he shall present to the Board of Pharmacy satisfactory evidence that he has had four years of experience in pharmacy under the instruction of a licensed pharmacist, and that he has attended a reputable school or college of pharmacy or medicine for not less than nine months and he shall also pass a satisfactory examination of the Board of Pharmacy; *Provided, however*, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed two years, may be deducted from the time of experience required. (1915, c. 165.)

The amending act contains the following:

"That the provisions of this act shall not affect any one now licensed as a pharmacist or who may become licensed before January, one thousand nine hundred and eighteen.

That this act shall be in force from and after January first, one thousand and nine hundred and eighteen."

#### 4484.

Amended, see Supplement 1913.

#### 4489.

For notes on this section see Supplement 1913.

#### 4490a.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

#### 4495. Board of examiners, meetings of.

The Board of Medical Examiners shall assemble once in every year in the city of Raleigh and the said board shall remain in session from day to day until all applicants who may present themselves for exami-

nation within the first two days of this meeting shall have been examined and been disposed of; other meetings in each year may be held at some suitable point in the State if deemed advisable. (1915, c. 220.)

**4498.**

Amended, see Supplement 1913.

**4498a.**

Amended, see Supplement 1913.

**4498d. Procuring of license to practice medicine.**

1. It shall be the duty of the State Board of Medical Examiners to examine any applicant for license to practice medicine on the subjects of anatomy, histology, physiology, and chemistry: *Provided*, said applicant shall furnish to the board satisfactory evidence from a medical school in good standing and supplying such facilities for anatomical and laboratory instruction as shall meet with the approval of the said board, that he has completed the course of study in said school upon said subjects. Said board shall set to the credit of said applicant upon the record books of said board the grade made upon said examination by said applicant, which shall stand to the credit of such applicant; and when he has subsequently completed the full course in medicine and presents a diploma of graduation from a medical college in good standing, requiring a four years course of study of medicine for graduation, and when he has completed the examination upon the further branches of medicine, to wit: medical hygiene, pharmacy, materia medica, therapeutics, obstetrics, pathology, practice of medicine and surgery, he shall have accounted to his credit the grade made upon the former examination, and if then upon such completed examination he be found competent, said board shall grant him a license to practice medicine, and surgery, and any of the branches thereof.

2. Said applicant shall pay seven and one-half dollars for each of the two examinations as herein provided for: *Provided*, that the whole of said sums shall be refunded to him if he fails to procure a license. (1915, c. 28. In effect February 12, 1915.)

**4501.**

Amended, see Supplement 1913.

**4503a.**

For notes on this section see Supplement 1913.

**4505a.**

Amended, see Supplement 1913.

**4505b-4505l.**

For notes on these sections see Supplement 1913.

**4505m.**

Repealed, see Supplement 1913.



4505n

For notes on this section see Supplement 1913.

### (3). Board of examiners.

There is hereby created a board, whose duty it shall be to carry out the purposes and enforce the provisions of this act, and shall be styled the "North Carolina State Board of Examiners in Optometry." Said board shall be appointed by the governor as soon as is practicable after the passage of this act, and shall consist of five regular optometrists who are members of the North Carolina Optometric Society and who have been engaged in the practice of optometry in the state of North Carolina for five years. The terms of said members, as appointed as aforesaid, shall be as follows: One for one year, one for two years, one for three years, one for four years, one for five years. The terms of members thereafter appointed shall be for five years. The appointments to fill vacancies shall be for the unexpired terms. The members of the board, before entering upon their duties, shall respectively take all oaths taken and prescribed for other state officers, in the manner provided by law and which shall be filed in the office of the Secretary of State, and said board shall have a common seal. (1909, c. 444, s. 3; 1915, c. 21.)

### (5). Examination for practice; registration and certificate.

Every person, before beginning to practice optometry in this state after the passage of this act, shall pass an examination before said board of examiners. Such examination shall be confined to such knowledge as is essential to the practice of optometry. Any person having signified his desire to be examined, and before beginning such examination, must be at the time twenty-one (21) years of age, shall file with the secretary of said board a certificate of good moral character, signed by two reputable citizens of this State: *Provided*, that an applicant from another State may have such certificate signed by any State officer of the State from which he comes, and shall pay to the said board for the use of said board the sum of ten dollars, and if he shall successfully pass said examination he shall pay to the said secretary for the use of said board a further sum of five dollars on the issuance to him of the certificate: *Provided*, any candidate presenting himself for examination and failing to successfully pass the board shall have returned to him the ten dollars fee required in this section. All persons successfully passing said examination shall be registered in the board registry, which shall be kept by said secretary, as licensed to practice optometry, and he shall also receive a certificate of registration, to be signed by the president and secretary of said board. (1909, c. 444, s. 5; 1915, c. 21.)

### (5a). Requirements for admission to examination.

Every applicant presenting himself for examination to the State board of examiners in optometry shall, before beginning such examination, satisfy said board that he has been in actual attendance at some recognized optical college for a period of not less than two years, or that he

has had two years of continuous optometrical practice under a registered optometrist, or by reason of a registered certificate of any State: *Provided, however*, that all citizens of this State who have begun the study of optometry before the passage of this act shall be exempt from the operation of this sub-section until the regular July meeting of the State board of examiners in optometry to be held in the year one thousand nine hundred and seventeen. (1915, c. 21.)

**(5b). Future requisites for admission to examination.**

On and after the first day of June, one thousand nine hundred and seventeen each applicant presenting himself before the State board of examiners in optometry for examination shall, before he is examined satisfy said board that he is a graduate of a high school, or that his literary attainments are equivalent to that of a high school education. (1915, c. 21.)

**4508.**

Amended, see Supplement 1913.

When read with Section 4509 this section means that when the household is indigent and unable to pay the expenses of patients in his family they shall be borne by the city, if he resides therein, and if not by the county; but the city is not liable to the county for the expenses of its patients any more than the county is to the city for the expenses of its patients. *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442.

If either the county or the city officiously interferes with the patients of the other and incurs expenses therefor, no recovery for them can be had. *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442.

If any liability was imposed by this section upon a city without a quarantine officer, it was to that extent in conflict with Section 21, Chapter 62, Laws 1911 and was repealed by the provisions of the repealing clause of that chapter. *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442. *Quære*.—Section 21, above mentioned, was repealed by Section 9, Chapter 181, Laws 1913. What was the effect of the repeal?

Where an unincorporated town has not appointed a quarantine officer it is to be regarded as any unincorporated part of the county as regards its liability for the expenses incurred by the county in the care of its citizens whom the latter, under its health regulations, have quarantined for smallpox. *Commissioners v. Henderson*, 163 N. C. 114, 79 S. E. 442.

For later provisions concerning inland quarantine, see Section 4434a(17).

**4509.**

See notes to Section 4508.

**4538b.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4538c.**

Amended, see Supplement 1913.

**4538d.**

Amended, see Supplement 1913.



**4538e.**

A training school for nurses authorized to be established in connection with the sanatorium. 1915, c. 163.

**4538j.**

Amended, see Supplement 1913.

**4538s. Treatment at the State sanatorium for indigent tubercular patients.**

Any city or town in the State of North Carolina through its board of aldermen, town council, or other governing body, and any county in the State of North Carolina through its board of commissioners, is hereby authorized and empowered to provide for the treatment of any tubercular person or persons resident in and who is a bona fide citizen of said city, town or county, at the North Carolina Sanatorium for the Treatment of Tuberculosis, and pay therefor to the said North Carolina with those of other States, on such subjects as taxation and Carolina Sanatorium for the Treatment of Tuberculosis an amount which shall not be more than one dollar per day per patient. (1915 c. 181. In effect March 9, 1915.)

**4540.**

For notes on this section see Supplement 1913.

**4541c.**

For notes on this section see Supplement 1913.

**4541d. Legislative reference library.**

WHEREAS, a comparative study of the laws and proposed laws of North revenue, elections, internal improvements, regulation of public service corporations, and other legislative matters of vital interest to the people, would afford to the members of the General Assembly information that is essential to the most efficient and intelligent legislation; and,

WHEREAS, the creation of a legislative reference library for the purpose of supply such information in classified and available shape to the members of the General Assembly, as has been demonstrated by the experience of thirty-four (34) of the most progressive States of the United States, would relieve them of much needless and expensive labor, besides enabling them to serve their constituents with greater efficiency at an actual saving of money to the State; now, therefore,

*The General Assembly of North Carolina do enact:*

1. That the North Carolina Historical Commission are hereby authorized and required to appoint a properly qualified person to be known as a legislative reference librarian, whose duty it shall be to collect, tabulate, annotate and digest information for the use of the members and committees of the General Assembly, and other officials of the State, and of the various counties and cities included therein, upon all ques-

tions of State, county and municipal legislation; to make references and analytical comparisons of legislation upon similar questions in other States and nations; and to have at hand for the use of the members of the General Assembly the laws of other States and nations as well as those of North Carolina and such other books, papers, and articles, as may throw light upon questions under consideration. It shall further be his duty to keep the Revisal of one thousand nine hundred and five revised to date.

It shall also be his duty to classify and arrange by proper indexes so as to make them accessible, all public bills relating to the aforesaid matters heretofore introduced into the General Assembly and he shall perform such other duties as may be required of him by said North Carolina Historical Commission. He shall also, upon request by members of the General Assembly, secure all available information on any particular subject named.

2. That the several departments of the State government shall upon request of said Historical Commission, supply said commission with such copies of their reports and other publications as may be necessary to effect exchanges with other States for their publications of a similar character, for use of said legislative reference library.

3. That the reports, bulletins, and other publications of said legislative reference librarian shall be printed under the direction of said Historical Commission as other State printing.

4. That for carrying out the purposes of this act, the sum of five thousand dollars (\$5,000) or so much thereof as may be necessary, is hereby annually appropriated, to be expended under the direction of said Historical Commission. (1915, c. 202. In effect March 9, 1915.)

#### 4545.

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

#### 4546a. Transporting patients to the hospitals for the insane.

1. Whenever any insane person shall be entitled to admission into any of the hospitals of the State the clerk of the superior court, justice of the peace or other officer authorized by law to find such person insane has so found and has been notified that such insane person will be admitted into such hospital, it shall be the duty of said clerk or justice of the peace forthwith to notify the superintendent of such hospital giving the race, name, sex and age, and it shall be the duty of such superintendent to send an attendant to bring such insane person to said hospital and such attendant shall have all such rights as the sheriff or other officer has heretofore had to convey such insane person to the hospital.

2. Upon the arrival of such insane person to the hospital the superintendent shall send to the board of commissioners of the county in which such insane person had a settlement, a bill covering the costs of conveying such insane person to an hospital including any fees that



would now be allowed an officer, and it shall be the duty of said board of commissioners forthwith to repay to such hospital the amount of said bill. (1915, c. 204. In effect March 9, 1915.)

**4547.**

While the Governor, alone, under Section 5328(3), may make appointment to vacancies on the boards mentioned in this section when the Senate is not in session, such action could only be for the interval until the Senate meets. *Salisbury v. Croom*, 167 N. C. 223, 83 S. E. 354.

**4559. Board may make ordinances; penalty to violate.**

Authority is hereby conferred upon the board of directors of each hospital and upon the board of directors and superintendent of the North Carolina school for the deaf to enact ordinances for the regulation and deportment of persons in the buildings and grounds of the institution, and for the suppression of nuisances and disorder, and when adopted the ordinances shall be recorded in the proceedings of the said board and printed, and a copy posted at the entrance to the grounds, and not less than three copies posted at different places within the grounds, and when so adopted, and printed, and posted up, the ordinances shall be binding upon all persons coming within the grounds. Each board is empowered and directed to prescribe penalties for the violation of each section of the ordinances so adopted, and if any person violates a section of the ordinances, the penalty prescribed may be recovered in a civil action instituted in the name of the hospital against the person offending, before any justice of the peace in the county in which the hospital is situated, and the sum so recovered shall be used as the board of directors shall direct. (1915, c. 14.)

**4560.**

For notes on this section see Supplement 1913.

**4573. Priority given to indigent; when private nurses provided.**

In the admission of patients to any state hospital, priority of admission shall be given to the indigent insane: Provided, that the boards of directors may regulate admissions, having in view the curability of patients, the welfare of their institutions, and the exigencies of particular cases: Provided further, that said boards may, if there be sufficient room, admit other than indigent patients upon payment of proper compensation. If any inmate of any state hospital shall require private apartments, extras or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by said patient. Upon the death of any non-indigent patient the State Hospital may maintain an action against his estate for his support and maintenance for a period of five years prior to his death. (1915, c. 254.)

**4596.**

For notes on this section see Supplement 1913.

**4685.**

Amended, see Supplement 1913.

**4691.**

A right of action arising upon a railroad under its common-law liabilities, to safely carry and deliver, and a right of action arising under the stipulations of one of its usual contracts, may be joined in the same action. *Lyon v. R. R.*, 165 N. C. 143, 81 S. E. 1.

For additional notes on this section see Supplement 1913.

**4700. Certificates as to statements and licenses to be sent to superior court clerks; clerks' duties.**

The insurance commissioner shall keep on file in his office, for the inspection of the public, all the reports received by him in obedience to this chapter, and shall certify to the clerk of the superior court of each and every county a copy of each volume of his official reports at the expense of the company making the same, and receive therefor from each company the sum of four dollars, provided the insurance commissioners may in lieu of said abstract file with the clerks of said courts a copy of the advance sheets of his report or the full report or both, and he shall also certify, at like expense, to such clerks, on the first day of each alternate month, a list of the licenses in force at such dates and those that have expired without renewal or that have been revoked, and each clerk shall file such certified abstracts and lists in stub books, to be kept for that purpose, furnished by the insurance commissioner which books shall be open for the inspection of the public. There shall be no tax for any seal on the certificates required by this section. (1915, cc. 62, 166.)

**4706. Agents must procure license.**

Every agent or adjuster of any insurance company authorized to do business in this state shall be required to obtain annually from the insurance commissioner a license under the seal of his office, showing that the company for which he is agent or proposes to adjust is licensed to do business in this state, and that he is an agent or adjuster of such company and duly authorized to do business for it. And every such agent, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit insurance. (1915, c. 166, s. 1.)

A policy of insurance issued by a company authorized to do business in this State is binding upon the company, though issued through a non-resident agent without a license, in violation of this section. *Hay v. Insurance Co.*, 167 N. C. 82, 83 S. E. 241.

For additional notes on this section see Supplement 1913.

**4713.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.

**4715.**

Amended, see Supplement 1913. For notes on this section see Supplement 1913.



**4726.**

Amended, see Supplement 1913.

**4729.**

Amended, see Supplement 1913.

**4731.**

Amended, see Supplement 1913.

**4738.**

Amended, see Supplement 1913.

**4740.**

Amended, see Supplement 1913.

**4747.**

For notes on this section see Supplement 1913.

**4748.**

Amended, see Supplement 1913.

**4757.**

For notes on this section see Supplement 1913.

**4759. Standard policy adopted.**

No fire insurance company shall issue fire insurance policies on property in this state other than those of the standard form filed in the office of the insurance commissioner of the state, known and designated as the standard fire insurance policy of the state of North Carolina, except as follows: (a) A company may print on or in its policies its name, location and date of incorporation, the amount of its paid-up capital stock, the names of its officers and agents, the number and date of the policy, and if it be issued through an agent, the words: "This policy shall not be valid until countersigned by the duly authorized manager or agent of the company at . . . . .," and after the words "Standard Fire Insurance Policy of the State of North Carolina," on the back of the form, the names of such other states as have adopted this standard form. (b) A company may use in its policies written or printed forms of description and specification of the property insured. (c) A company insuring against damage by lightning may print in the clause enumerating the perils insured against, the additional words, "also any damage by lightning, whether fire ensues or not," and in the clause providing for an apportionment of loss in case of other insurance, the words, "whether by fire, lightning, or both." (d) A company may write or print upon the margin or across the face of a policy, or write or print in type not smaller than long primer or ten-point roman-faced, upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form, and all such slips, riders and provisions must be signed by the officers or agents of the company so using them. The iron-safe, or any similar

clause requiring the taking of inventories, the keeping of books and producing the same in the adjustment of any loss shall not be used or operative in the settlement of losses on buildings, furniture and fixtures, or any property not subject to change in bulk and value. (e) Every mutual company shall cause to appear in the body of its policy the total amount for which the assured may be liable under the charter of the company. (f) The company may print on or in its policy with the approval of the insurance commissioner, if the same is not already included in such standard form, any provision which any such corporation is required by law to insert in its policies not in conflict with the provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements or conditions of the policy under a separate title as follows: Provisions Required by Law to be Inserted in This Policy. (1907, c. 800; 1915, c. 109. In effect January 1, 1916.)

For notes on this section see Supplement 1913.

#### 4760. Form of standard policy.

The standard form of policy shall be plainly printed, and no portion thereof shall be in type smaller than the type used in printing the form on file in the office of the insurance commissioner, and shall be as follows, to-wit:

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

Amount \$..... Rate ..... Premium \$.....

In Consideration of the Stipulations herein named and of.....  
..... Dollars Premium does  
insure .....

..... and legal representatives, to the extent  
of the actual cash value (ascertained with proper deductions for depreciation) of the property at the time of loss or damage, but not exceeding the amount which it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, for the term of.....  
..... from the .....  
day of ..... 19..., at noon, to the.....  
..... day of ..... 19..., at noon, against  
all *direct loss and damage by fire* and by removal from premises endangered by fire except as herein provided, to an amount not exceeding  
.....dollars to the following described property  
while located and contained as described herein, or pro rata for five days  
at each proper place to which any of the property shall necessarily be  
removed for preservation from fire, but not elsewhere, to wit:

[Space for description of property.]



This policy is made and accepted subject to the foregoing stipulations and conditions, and to the stipulations and conditions printed on the back hereof, which are hereby made a part of this policy, together with such other provisions, stipulations and conditions as may be endorsed hereon or added hereto as herein provided.

*In Witness Whereof*, this company has executed and attested these presents.

[Space for date and for signatures and titles of officers and agent.]

*Fraud, misrepresentation, etc.*—This entire policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud or false swearing by the insured touching any matter, relating to this insurance or the subject thereof, whether before or after a loss.

*Property which can not be insured.*—This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, notes or securities.

*Hazards not covered.*—This company shall not be liable for loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises.

*This entire policy shall be void, unless otherwise provided by agreement in writing added hereto.*

*Ownership, etc.*—(a) if the interest of the insured be other than unconditional and sole ownership; or (b) if the subject of insurance be a building on ground not owned by the insured in fee simple; or (c) if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property insured hereunder by reason of any mortgage or trust deed; or (d) if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy be assigned before a loss.

*Unless otherwise provided by agreement in writing added hereto this company shall not be liable for loss or damage occurring,*

*Other Insurance.*—(a) while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or

*Increase of Hazard.*—(b) while the hazard is increased by any means within the control or knowledge of the insured; or

*Repairs, etc.*—(c) while mechanics are employed in building, altering or repairing the described premises beyond a period of fifteen days; or

*Explosives, gas, etc.*—(d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used or allowed on the described premises fireworks, greek fire, phosphorus, explosives, benzine, gasoline,

naphtha or any other product of petroleum of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

*Factories.*—(e) if the subject of insurance be a manufacturing establishment while operated in whole or in part between the hours of ten p. m. and five a. m., or while it ceases to be operated beyond a period of ten days; or

*Unoccupancy.*—(f) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of ten days; or

*Excepted property.*—(g) to bullion, manuscripts, mechanical drawings, dies or patterns; or

*Explosion, lighting.*—(h) by explosion or lighting, unless fire ensue, and, in that event, for loss or damage by fire only.

*Chattel Mortgage.*—Unless otherwise provided by agreement in writing added hereto this company shall not be liable for loss or damage to any property insured hereunder while incumbered by a chattel mortgage, and during the time of such incumbrance this company shall be liable only for loss or damage to any other property insured hereunder.

*Fall of Building.*—If a building, or any material part thereof, fall except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

*Added Clauses.*—The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss or damage, and any other agreement not inconsistent with or a waiver of any of the conditions or provisions of this policy, may be provided for by rider added hereto.

*Waiver.*—No one shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement added hereto, nor shall any such provision or condition be held to be waived unless such waiver shall be in writing added hereto, nor shall any provision or condition of this policy or any forfeiture be held to be waived by any requirement, act or proceeding on the part of this company relating to appraisal or to any examination herein provided for; nor shall any privilege or permission affecting the insurance hereunder exist or be claimed by the insured unless granted herein or by rider added hereto.

*Cancellation of policy.*—This policy shall be cancelled at any time at the request of the insured, in which case the company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by the company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of



cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

*Pro rata liability.*—This company shall not be liable for a greater proportion of any loss or damage than the amount hereby insured shall bear to the whole insurance covering the property, whether valid or not and whether collectible or not.

*Noon.*—The word “noon” herein means noon of standard time at the place of loss or damage. If loss or damage is made payable, in whole or in part, to a mortgagee, this policy may be cancelled as to such interest by giving to the mortgagee a ten days’ written notice of cancellation. Upon failure of the insured to render proof of loss such mortgagee shall, as if named as insured hereunder, but within sixty days after such failure, render proof of loss and be subject to the provisions hereof as to appraisal and time of payment. On payment to a mortgagee of any sum for loss or damage hereunder, if this company shall claim that as to the mortgagor or owner, no liability existed, it shall, to the extent of such payment be subrogated to the mortgagee’s right of recovery and claim upon the collateral to the mortgage debt, but without impairing the mortgagee’s right to sue; or it may pay the mortgage debt and require an assignment thereof and of the mortgage. Except as stated in this paragraph, the agreement between a mortgagee and this company shall be only as stated by rider added hereto.

*Requirements in case of loss.*—The insured shall give immediate notice, in writing, to this company, of any loss or damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and, *the insured shall, within sixty days after the fire, unless such time is extended in writing by this company, render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss or damage thereto; all incumbrances thereon; all other contracts of insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; and by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.* The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required,

shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

*Appraisal.*—In case the insured and this company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire then, on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the State in which the property insured is located. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

*Company's options.*—It shall be optional with this company to take all, or any part, of the articles at the agreed or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required; but

*Abandonment.*—There can be no abandonment to this company of any property.

*When loss payable.*—The amount of loss or damage for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss or damage is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

*Suit.*—No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity unless the insured shall have complied with all the requirements of this policy, nor unless commenced within twelve months next after the fire.

*Subrogation.*—This company may require from the insured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this company.

#### Standard Fire Insurance Policy of the State of

Expires .....	
Property .....	
Amount - - - - -	\$.....
Premium - - - - -	\$.....

No. ....



It is important that the written portions of all policies covering the same property read exactly alike. If they do not they should be made uniform at once. (1915, c. 109, s. 9. In effect January 1, 1916.)

For notes on this section see Supplement 1913.

**4761. Size and folding of policy; appraisers may act separately, when.**

No provisions of this chapter shall limit insurance companies to the use of any particular size or manner of folding the paper upon which their policies may be issued. If notice in writing signed by the assured, or his agent, be given before loss or damage by fire to the agent of the company of any fact or condition stated in paragraphs (a), (b), (c), (d), (e), (f), of the foregoing form of policy, the same shall be equivalent to an agreement in writing added thereto, and shall have the force of the agreement in writing referred to in the foregoing form of policy with respect to the liability of the company and the waiver; but such notice shall not affect the right of the company to cancel the policy as therein stipulated.

The resident judge of the superior court of the district in which the property insured is located is fixed and designated as the judge of the court of record to select the umpire referred to in the foregoing form of policy. Whenever any company shall demand or require the insured, under any fire insurance policy, to furnish a statement in writing as prescribed in the standard policy form, after a fire or loss occurs, the company or its representative shall furnish to the insured a blank or blanks in duplicate to be used for the purpose, which blanks shall be of standard form such as the Insurance Commissioner has approved. The failure to furnish said blanks shall be a waiver of said provision requiring such statement. (1907, c. 578; 1915, c. 109, s. 11. In effect January 1, 1916.)

**4762.**

For notes on this section see Supplement 1913.

**4762a(1). Use of license taxes; report of commissioner.**

The license tax imposed upon fire insurance companies shall be, as now, paid to the insurance commissioner, and by him shall be used for the purpose of investigating all fires occurring in the State, and those required by sections four thousand eight hundred and nineteen, four thousand eight hundred and twenty, four thousand eight hundred and twenty-one, Revisal of one thousand nine hundred and five, and for the employment of a competent man to give instructions to fire companies, and for the expense of a better inspection of buildings in cities and towns. The commissioner shall in his annual report make a statement of the fires investigated, the value of the property destroyed, the amount of insurance, if any, the origin of the fire, when ascertained, and the location of the property damaged or destroyed, whether in town, city or country; and shall also file annually an itemized statement under oath

## 4762a(3) AMENDMENTS AND NOTES TO REVISAL

of all moneys received by him and disbursed hereunder. (1915, c. 109, s. 1. In effect July 1, 1915.)

2. (This section of this act amended section 4823 of the Revisal.)

### (3). Items to be disclosed by policies.

There shall be printed, stamped or written on each fire policy issued in this State, the basis rate, deficiency charge, the credit for improvements and the rate at which written, and whenever a rate is made or changed on any property situated in this State a full statement thereof showing in detail the basis rate, deficiency charges and credits as well as rate proposed to be made shall be delivered to the owner or his representative having the insurance on the property in charge, by the company, association, their agent or representative with a notice to the effect that said rate is promulgated and filed with the insurance department. Every agent of a fire insurance company shall, before issuing a policy of insurance on property situated in a city or town, inspect the same informing himself as to its value and insurable condition. (1915, c. 109, s. 3. In effect July 1, 1915.)

### (4). When encumbrance not to avoid policy.

No policy of insurance issued upon any property shall be held void because of the failure to give notice to the company of a mortgage or deed of trust existing thereon or thereafter placed thereon, except during the life of the mortgage or deed of trust. (1915, c. 109, s. 4. In effect July 1, 1915.)

### (5). When clauses for additional or co-insurance void.

No fire insurance company licensed to do business in this State may issue any policy or contract of insurance covering property in this State which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than that expressed in such policy, nor in any way provide that the assured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provision shall be null and void, and of no effect: *Provided*, the co-insurance clause or provision may be written in or attached to a policy or policies issued when the assured or his agent shall, in writing, request such co-insurance clause or provision, and in which case the rate for the insurance, with and without the co-insurance clause shall be furnished the owner, and where the owner elects to have his insurance property written with co-insurance, then all policies on said property shall be so written, and there shall be stamped on them the words "co-insurance contract." (1915, c. 109, s. 5. In effect July 1, 1915.)

6. (This section amended section 1, ch. 79, Laws 1913. See section 4812a herein.)



**(7). Adjusters to be licensed.**

That every person adjusting loss for any insurance company doing business in this State, commonly called adjusters, shall be licensed by the insurance commissioner of this State as agents of said companies are licensed; and before issuing license to any such person, the adjuster and the company or companies for which he desires to act as adjuster, shall apply for license on forms prescribed by the insurance commissioner and the insurance commissioner shall satisfy himself that such person so applying for license as adjuster, is a person of good moral character, has sufficient knowledge of the business of insurance, and his duties as adjuster, that he has not violated any of the insurance laws of this State and that he is a proper person for such position. (1915, c. 109, s. 7. In effect July 1, 1915.

**(8). Tax deducted from premiums to non-licensed companies.**

Whenever any person or corporation shall insure any property located in this State with an insurance company not licensed to do business in this State, it shall be the duty of such person or corporation to deduct from the premium charged on the policy or policies issued for such insurance five per centum of said premium and remit the same to the insurance commissioner of the State, at the same time reporting to the insurance commissioner the name of the company or companies issuing the policy or policies, the location of the property insured and the premium charged. The insurance commissioner shall pay the said amounts to the treasurer of the State: *Provided*, that if such report is not made on or before the thirtieth days of July and January of each year for the business done prior to July first and January first preceding; there shall be added to the amount of taxes thereon the sum of one per centum on the first day of each month thereafter. (1915, c. 109, s. 8. In effect July 1, 1915.)

9. (This section of this act amends the standard form of policy. See section 4760 herein.)

10. (This section of this act amends section 4759 of the Revisal. See that section number.)

11. (This section of this act amends section 4761 of the Revisal. See that section number.)

**(12). Manufacture, sale or gift of matches regulated; shipping containers.**

(a) That no person, association or corporation, shall manufacture, store, offer for sale, sell or otherwise dispose of, or distribute white phosphorous, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches;" nor manufacture, store, sell, offer for sale or otherwise dispose of, or distribute, white phosphorous, double-dipped, strike-anywhere matches or any other type of double-dipped matches. unless the bulb or first dip of such match is composed of a so-called safety or inert composition, non-ignitable on an abrasive surface; nor manu-

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facture, store, sell, or offer for sale, or otherwise dispose of, or distribute matches which when packed in a carton of five hundred approximate capacity and placed in an oven maintained at a constant temperature of two hundred degrees F., will ignite in eight hours; nor manufacture, store, offer for sale, sell or otherwise dispose of, or distribute, blazer or so-called wind matches, whether of the so-called safety or strike-anywhere type.

(b) No person, association, or corporation shall offer for sale, sell or otherwise dispose of, or distribute, any matches, unless the package or container in which such matches are packed, bears plainly marked on the outside thereof, the name of the manufacturer and the brand or trade-mark under which such matches are sold, disposed of, or distributed, nor shall more than one case of each brand of matches of any type or manufacture be opened at any one time in the retail store where matches are sold or otherwise disposed of; nor shall loose boxes or paper-wrapped packages of matches be kept on shelves or stored in such retail stores at a height exceeding five feet from the floor; all matches when stored in warehouses, must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove or other like heating apparatus; nor within a horizontal distance of twenty-five feet from any explosive material kept or stored on the same floor; all matches shall be packed in boxes or suitable packages, containing not more than seven hundred matches in any one box or package: *Provided, however,* that when more than three hundred matches are packed in any one box or package, the said matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions, and all boxes containing three hundred and fifty or more matches, shall have placed over the matches a center-holding or protecting strip, made of chip board, not less than one and one-quarter inches wide; said strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it.

(c) All match boxes or packages shall be placed in strong shipping containers or cases; maximum number of match boxes or packages contained in any one shipping container or case, shall not exceed the following number:

<i>Number of Boxes.</i>	<i>Nominal Number of Matches per Box.</i>
½ gross	700
1 gross	500
2 gross	400
3 gross	300
5 gross	200
12 gross	100
20 gross over 50 and under	100
25 gross under	50



No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wirebound, shall exceed a weight, including its contents, of seventy-five (75) pounds; and no lock cornered wooden case containing matches shall have a weight, including its contents, exceeding eighty-five (85) pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "Strike-anywhere Matches" or "Strike-on-the-Box Matches."

(d) Any person, association or corporation, violating any of the provisions of this section of this act shall be fined for the first offense, not less than five dollars (\$5.00), nor more than twenty-five dollars (\$25), and for each subsequent violation, not less than twenty-five (\$25) dollars.

(e) All laws in conflict with the provisions of this section of this act are hereby repealed. (1915, c. 109, s. 12. In effect January 1, 1916.)

**4763.**

While this section prevents the company from bringing an action upon the policy, it does not make the policy void in the hands of the assured. *Hay v. Insurance Co.*, 167 N. C. 82, 83 S. E. 241.

**4765.**

A policy of insurance issued by a company authorized to do business in this State, is binding upon the company though issued through a non-resident agent without a license in a violation of this section. *Hay v. Insurance Co.*, 167 N. C. 82, 83 S. E. 241.

**4768. Agreements limiting agent's compensation.**

It shall be unlawful for any fire insurance company, association or partnership doing business in this state employing an agent who is employed by another fire insurance company, association or partnership, either directly or through any organization or association, to enter into, make or maintain any stipulation or agreement in restraint of or limiting the compensation which said agent may receive from any other fire insurance company, association or partnership, or forbidding or prohibiting reinsurance of the risks of a domestic fire insurance company in whole or in part by any company holding membership in or co-operating with said bureau or board. (1915, c. 166, s. 2.)

**4770a.**

(1) (This paragraph of this section was sec. 1 of ch. 923. Laws 1909. It was amended by ch. 164, Laws 1911. The last mentioned act, however, was repealed by ch. 62, Laws Ex. Session of 1913. Paragraph 6, ch. 166, Laws 1915, attempts to amend the repealed chapter, but we take it that the act is a nullity.)

**4773.**

For notes on this section see Supplement 1913.

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4773a.

Amended, see Supplement 1913. For additional notes on this section see Supplement 1913.

In a suit on a policy coming within this section, the burden is on the plaintiff to allege and prove that the insurance commissioner did not approve the certificate. *Blount v. Fraternal Ass'n.*, 163 N. C. 167, 79 S. E. 299.

This statute does not purport to deal with the validity of the contract of insurance, but with the insurance company, and a policy issued in violation of its terms is not invalid. *Blount v. Fraternal Ass'n.*, 163 N. C. 167, 79 S. E. 299.

4775.

Amended, see Supplement 1913.

This section is in all material respects like Section 4773a, was considered at this term in *Blount v. Fraternal Association*, 163 N. C. 167, and should receive the same construction. *Robinson v. Life Co.*, 163 N. C. 415, 79 S. E. 681.

This section does not invalidate the contract of insurance or the agreement of the parties, and it purports to operate upon the insurance companies alone. *Robinson v. Life Co.*, 163 N. C. 415, 79 S. E. 681.

For additional notes on this section see Supplement 1913.

4780.

Amended, see Supplement 1913.

4781.

Amended, see Supplement 1913.

4782.

Amended, see Supplement 1913.

4792.

Amended, see Supplement 1913.

Matter alleged as a defense not constituting a counter claim is deemed to be denied without a reply. *Williams v. Hutton*, 164 N. C. 216, 80 S. E. 257.

For additional notes on this section see Supplement 1913.

4794-4798.

All of these sections amended, see Supplement 1913. For notes on these sections see Supplement 1913.

4798a.

For notes on this section see Supplement 1913.

4798b.

For notes on this section see Supplement 1913.

4804.

When the insured states that he had not been under the care of a physician within twelve months next preceding date, it was not necessary that he should have been bedridden to constitute the relationship. *Schas v. Insurance Co.*, 166 N. C. 55, 81 S. E. 1014.

4805.

Amended, see Supplement 1913.



**4805a.**

For notes on this section see Supplement 1913.

**4805b.**

See Section 4789a for subsequent act.

**4806a. When loans by insurance companies not usurious.**

Where any insurance company, as a condition for a loan by such company, of money upon mortgage or other security, shall require that the borrower insure either his life or that of another, or his property, with such company, and assign to such company, or cause to be assigned to it, any policy of insurance as security for such loan, and agree to pay premiums thereon during the continuance of such loan, whether such premium be paid annually, semi-annually, quarterly, or monthly, such premiums shall not be considered as interest on such loans, nor shall any loan be rendered usurious by reason of any such requirements, where the rate of interest charged for the loan does not exceed the legal rate and where the premiums charged for the insurance do not exceed the premiums charged to other persons for similar policies who do not obtain loans. (1915, c. 8. In effect January 29, 1915.)

**4808.**

If a representation made in the application is false and material, and the company is ignorant of its falsity, it vitiates both the binding receipt and the policy unless the company has in some way waived it by its conduct and with full knowledge of the facts. *Gardner v. Insurance Co.*, 163 N. C. 367, 79 S. E. 806.

Stipulations contained in a policy of insurance on automobiles, relating to matters which influence the insurer in accepting the risk and fixing the rate of premium, are held to be material, and will avoid liability thereunder when disregarded by the insured, without the necessity for the insurer to show that their infraction contributed to the loss. *Lummus v. Insurance Co.*, 167 N. C. 654, 83 S. E. 688.

Every fact which is untruly stated or wrongfully suppressed must be regarded as material, if the knowledge or ignorance of it would naturally and reasonably influence the judgment of the underwriter in making the contract at all, or in estimating the degree or character of the risk, or in fixing the rate of premium. *Gardner v. Insurance Co.*, 163 N. C. 367, 79 S. E. 806; *Schas v. Insurance Co.*, 166 N. C. 55, 81 S. E. 1014.

The meaning of the last clause of this section, plainly, is that a material representation shall avoid the policy if it also is false and calculated to influence the company, if without notice of its falsity, in making the contract at all, or in estimating the degree and character of the risk, or in fixing the premium. *Schas v. Insurance Co.*, 166 N. C. 55, 81 S. E. 1014; *Gardner v. Insurance Co.*, 163 N. C. 367, 79 S. E. 806.

In an action to recover a sick benefit, due the plaintiff by reason of his membership in the relief department of a railroad company which he was required to join, it was held that the defendant must show that the representation in the application for membership was knowingly false or made with a fraudulent purpose to mislead the defendant. *Daghtridge v. R. R.*, 165 N. C. 188, 80 S. E. 1080.

It is not necessary to inquire whether there was a moral or intentional wrong, if the representation made in the application was false and material. *Schas v. Insurance Co.*, 166 N. C. 55, 81 S. E. 1014.

When there is evidence that the insured made a misrepresentation in his application for a policy of life insurance, such conditions and relevant facts and circumstances relating to the truth or falsehood of the statement should be determined by the jury upon a proper issue. *Schas v. Insurance Co.*, 165 N. C. 55, 81 S. E. 1014.

It is not necessary to defeat a recovery that a material misrepresentation by the applicant should contribute in some way to the loss for which indemnity is claimed. *Schas v. Insurance Co.*, 166 N. C. 55, 81 S. E. 1014; *Lummus v. Insurance Co.*, 167 N. C. 654, 83 S. E. 688.

For additional notes on this section see Supplement 1913.

#### 4809.

A provision in an employee's indemnity bond which requires that no suits "or proceedings at law or in equity shall be brought against the surety after the expiration of six months from the end of the time during which, under the terms of this bond, the employer's claim may be filed with the surety" is void. *Insurance Co. v. Bonding Co.*, 162 N. C. 384, 78 S. E. 430.

For additional notes on this section see Supplement 1913.

#### 4810.

Amended, see Supplement 1913.

#### 4812a. Licensing of agents and adjusters.

(1) Before any license is issued to an insurance agent or adjuster in this state, the agent or adjuster applying for such license and the company for which he desires to act as agent or adjuster, shall apply for such license on forms to be prescribed by the insurance commissioner, and before any license to such agent or adjuster is issued the insurance commissioner shall satisfy himself that such person so applying for license as an agent or adjuster, is a person of good moral character, that he intends to hold himself out in good faith as an insurance agent, and has sufficient knowledge of the business proposed to be done, that he has not willfully violated any of the insurance laws of this state, and that he is a proper person for such position.

(2) Whenever the insurance commissioner shall become satisfied that any insurance agent or adjuster licensed by this state has willfully violated any of the insurance laws of this state, or has willfully overinsured property of any citizens of the state, or has willfully misrepresented any policy of insurance, or has dealt unjustly with or willfully deceived any citizen of this state in regard to any insurance policies, or has failed or refused to pay over to the company, which he represents or has represented, any money or property in the hands of such agent or adjuster belonging to the company, when demanded, or has in any other way become unfit for such position, then and in any of such cases the insurance commissioner may, and it shall be his duty to revoke the license of such agent or adjuster for all the companies which he represents in this state for such length of time as he may decide, not exceeding one year: *Pro-*



*vided, however*, that the insurance commissioner shall give to said agent or adjuster ten days notice of such revocation of such license, and shall give the reasons therefor. And said agent or adjuster shall have the right to have such revocation reviewed by any judge of the superior court of Wake County of North Carolina upon appeal.

(3) When, for the purpose of investigation, under this act, the insurance commissioner shall have all the powers conferred by section four thousand seven hundred and sixty-seven of the Revisal of one thousand nine hundred and five. (1913, c. 79; 1915, cc. 109, 166.)

#### **4814a(1). Information to be filed with insurance commissioner.**

Every corporation, board, association or bureau which now exists or hereafter may be formed, and every person who maintains, or hereafter may maintain, a bureau or office for the purpose of suggesting, approving or making rates to be used by more than one underwriter for insurance, including surety bonds, on property or risks of any kind located in this state, shall file with the insurance commissioner a copy of the articles of agreement, association or incorporation and the by-laws and all amendments thereto under which such person, association or bureau operates or proposes to operate, together with his or its business address and a list of the members or insurance corporations represented or to be represented by him or it, as well as such other information concerning such rating organization and its operations as may be required by the insurance commissioner. (1913, c. 145, s. 1; 1915, c. 166, s. 8.)

#### **(2). Supervision of insurance commissioner; examinations.**

Every such person, corporation, association or bureau, whether before or after the filing of the information specified in the preceding section, shall be subject to the visitation, supervision and examination of the insurance commissioner, who shall cause to be made an examination thereof as often as he deems it expedient, and at least once in three years. For such purpose he may appoint as examiners one or more competent persons, and upon such examination he, his deputy or any examiner authorized by him shall have all the powers given to the insurance commissioner, his deputy or any examiner authorized by him by law, including the power to examine under oath the officers and agents and all persons deemed to have material information regarding the business or manner of operation by every such person, corporation, association, bureau, or board. The insurance commissioner shall make public the report on the methods of such rating organization and the manner of its operation. (1913, c. 145, s. 2.)

#### **(3). Schedules of rates filed.**

Each such person, corporation, association or bureau as well as every insurance company doing business in the State shall file with the insurance commissioner, whenever he may call therefor, any and every schedule of rates or such other information concerning such rates as may

be suggested, approved or made by any such rating organization for the purposes specified in section one of this act, or by such company for its own use. (1913, c. 145, s. 3; 1915, c. 166, s. 8.)

**(4). Rate fixing on certain conditions forbidden; discriminations.**

No such person, corporation, association or bureau shall fix or make any rate or schedule of rates which is to or may apply to any risk within this state, on the condition that the whole amount of insurance on such risk or any specified part thereof shall be placed at such rates, or with the members of or subscribers to such rating organization; nor shall any such person, association or corporation authorized to transact the business of insurance within this state, fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within this state of essentially the same hazard, or if such rate be a fire insurance rate, which discriminates unfairly between the risks in the application of like charges or credits or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of public protection against fire. Whenever it is made to appear to the satisfaction of the insurance commissioner that such discrimination exists, he may, after a full hearing, either before himself or before any salaried employee of the insurance department whose report he may adopt, order such discrimination removed; and all such persons, corporations, associations or bureaus affected thereby shall immediately comply therewith; nor shall such persons, corporations, associations or bureaus remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it is made to appear to the satisfaction of the insurance commissioner that such increase is justifiable. (1913, c. 145, s. 4.)

**(5). Hearing of complaints of ratings.**

Any person, firm or corporation aggrieved by any rating of a fire insurance company, bureau or board, may file a complaint in writing with the Insurance Commissioner stating in detail the grounds upon which the complaint asks relief. The Commissioner shall set a time, not earlier than seven days after the date of the notice, and a place for a hearing upon the complaint. After due hearing the Commissioner shall make a finding as to whether the established rate is excessive or unfair, and shall make such recommendations as he deems advisable. The finding and recommendations in each case shall be made a matter of record, and shall be open to public inspection. (1915, c. 166, s. 8.)

**(6). Records; information as to rates.**

Every such rating organization shall keep a careful record of its proceedings and shall furnish upon demand to any person upon whose property or risk a rate has been made, or to his authorized agent, full information as to such rate, and if such property or risk be rated by schedule, a copy of such schedule; it shall also provide such means as may



be approved by the insurance commissioner whereby any person or persons affected by such rate or rates may be heard, either in person or by agent, before the governing or rating committee or other proper executive of such rating organization on an application for a change in such rate or rates. (1913, c. 145, s. 5; 1915, c. 166, s. 8.)

**(7). Contracts excepted.**

This act shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business on the mutual or co-operative plan as associations or societies, nor title and credit insurance. (1913, c. 145; 1915, c. 166, s. 8.)

**4821a. Teaching of fire protection.**

It shall be the duty of the Insurance Commissioner and Superintendent of Public Instruction to provide as far as practicable for the teaching of "Fire Prevention" in the colleges and schools of the State, and if the way be open, to arrange for a text-book adapted to such use. (1915, c. 166, s. 5.)

**4821b. Fire prevention day.**

The ninth day of October of each and every year shall be set aside and designated as "Fire Prevention Day," and the Governor shall issue a proclamation urging the people to a proper observance of the said day, and the Insurance Commissioner shall bring the day and its observance to the attention of the officials of the municipalities of the State, and especially to the firemen, and where possible arrange suitable programs to be followed in its observance. (1915, c. 166, s. 5.)

The act numbers this section "4721b" but evidently intended that the number should be 4821b, and it is therefore inserted under that number.

**4822. Fire loss to be reported to commissioner before payment.**

Every insurance company transacting business in this state shall, upon receiving notice of loss by fire of property in North Carolina, on which it is liable under a policy of insurance, notify the insurance commissioner thereof, either directly or through some bureau or association approved by the Insurance Commissioner, and no insurance upon any such property shall be paid by any company until one week after such notification. Any company violating this section may be fined by the insurance commissioner the sum of ten dollars for each and every offense, and, for refusal to comply with its provisions, its license may be cancelled by the commissioner. (1915, c. 166, s. 4.)

**4823. Special tax on fire companies to defray expenses.**

Any expenses, including counsel fees, expense of deputy, detectives and officers, incurred by the insurance commissioner in the performance of the duties imposed upon him by the provisions of this subchapter, shall be defrayed by the insurance department out of the moneys directed to be collected by section one of this act. (1915, c. 109, s. 2.)

**4824a.**

For notes on this section see Supplement 1913.

**4829.**

Amended, see Supplement 1913.

**4833.**

For notes on this section see Supplement 1913.

**4842.**

Amended, see Supplement 1913.

**4844.**

Amended, see Supplement 1913.

**4845.**

Amended, see Supplement 1913.

**4848-4858.**

All of these sections amended, see Supplement 1913.

**4858a. Active members exempt from road and jury duty.**

3. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed: *Provided*, that no part of this act shall be construed as repealing, abridging, or in any way affecting sections four thousand nine hundred and fourteen and four thousand nine hundred and fifteen of the Revisal of one thousand nine hundred and eight. (1913, c. 103; 1915, c. 217.)

**4859-4905.**

All of these sections amended, see Supplement 1913.

**4935.**

Amended, see Supplement 1913.

**4957a. Board of Commissioners of Navigation and Pilotage established; Governor appoints; general powers; appoint harbor master.**

A Board of Commissioners of Navigation and Pilotage for the Cape Fear River and bar is hereby constituted, and shall consist of five members, four of whom shall be residents of the city of Wilmington and one of the city of Southport. The members of the board shall be appointed by the Governor, and their terms of office shall begin on April fifteenth of the year in which they are appointed, and continue for four years and until their successors shall be appointed and qualified. It shall be the



duty of the Governor to appoint, on or before the fifth day of April, one thousand nine hundred and seven, and on or before the fifth day of April of every fourth year thereafter, the members of the said Board of Commissioners. A majority of said board shall constitute a quorum and may act in all cases. Said board shall have power to fill vacancies, as they occur, in the board during their term; to appoint a clerk to record in a book, rules, orders and proceedings of the board; and they shall have authority in all matters that may concern the navigation of waters from seven miles above Negro-Head Point downwards, and out of the bar and inlets. They shall annually, on the first Monday in May, appoint a harbor-master for the port of Wilmington. (1907, c. 625, s. 1; 1915 c. 200.)

For notes on this section see Supplement 1913.

#### 4957b.

For notes on this section see Supplement 1913.

#### 4957c.

For notes on this section see Supplement 1913.

#### 4957m.

For notes on this section see Supplement 1913.

#### 4957p.

For notes on this section see Supplement 1913.

#### 4969. Rates of pilotage.

The pilotage for Old Topsail inlet and Beaufort harbor shall be as follows: For vessels drawing eight feet and under, two dollars per foot; ten feet and over eight, two dollars and fifty cents per foot; twelve feet and over ten, three dollars and fifty cents per foot; all over twelve feet, four dollars per foot. The above fees to be collectible in Beaufort harbor from Middle marsh to Lewis thoroughfare, and from the Neuse river side of the Inland Waterway through the said waterway and out of Beaufort Inlet. *Provided*, that this act and the amendment to said section four thousand nine hundred and sixty-nine of the Revisal of one thousand nine hundred and five, the same being chapter two hundred and fifty of the Public Laws of one thousand nine hundred and nine, shall be applicable to all vessels including barges in tow of tug boats. For every vessel piloted without these bounds an additional charge of fifty cents per foot may be charged. The commissioners shall have the same printed or written on every license or branch issued by them, and every pilot shall exhibit his license to the master of every vessel he has in charge, when demanded by said master. No vessel entering Old Topsail inlet without a pilot shall be required to take one on going to sea; nor shall any vessel be required to take a pilot that has to enter the harbor in distress. (1909, c. 250; 1915, c. 142.)

#### 4969b. Numbering pilot vessels in Carteret County.

After the first day of April, one thousand nine hundred and fifteen,

each and every pilot vessel in Carteret County shall be numbered; and any pilot after that date piloting a vessel or barge in or out of said territory as set out in this act and section four thousand nine hundred and sixty-nine of the Revisal of one thousand nine hundred and five, without a number shall be guilty of a misdemeanor and be subject to a fine of not more than fifty dollars or imprisoned not more than thirty days, or both, in the discretion of the court. All said fines collected under this act to be applied to the public school fund of Carteret County. (1915, c. 142, s. 2.)

#### 4969c. Forfeiture of branch by pilot.

Each pilot shall forfeit his branch after fifteen days expiration of the same; however, such pilot may be reinstated, by securing two pilots in good standing, to sign his branch. *Provided further*, that the commissioners of navigation of Beaufort Harbor shall provide for numbers as provided for in this act. (1915, c. 142, s. 3.)

#### 4975.

For notes on this section see Supplement 1913.

#### 4976.

For notes on this section see Supplement 1913.

#### 4978.

For notes on this section see Supplement 1913.

#### 4983a. Regulating the business of pawnbrokers.

1. No person, firm or corporation shall engage in the business of lending money, or other things, for profit or on account of specific articles of personal property deposited with the lender in pledge in this State which business is commonly known as that of pawnbrokers, except in incorporated cities and towns, and without first having obtained a license to do so from such incorporated cities and towns, and by paying the county, State and municipal license tax required by law, and otherwise complying with the requirements made in this and succeeding sections. Any person, firm or corporation who shall engage in the business of lending or advancing money on the pledge and possession of personal property or dealing in the purchasing of personal property or valuable things on condition of selling the same back again at stipulated prices, is hereby declared and defined to be a pawnbroker.

2. The board of aldermen, or other governing body, of any city or town in this State may grant to such person, firm or corporation as it may deem proper, and who shall produce satisfactory evidence of good character, a license authorizing such person, firm or corporation to carry on the business of a pawnbroker, which said license shall designate the house in which such person, firm or corporation shall carry on said business, and no person, firm or corporation shall carry on the business of a pawnbroker without being duly licensed, nor in any other house



than the one designated in the said license. Every person, firm or corporation so licensed to carry on the business of a pawnbroker shall, at the time of receiving such license, file with the mayor of the city or town granting the same, a bond payable to such city or town in the sum of one thousand dollars, to be executed by the persons so licensed and by two responsible sureties, or a surety company licensed to do business in the State of North Carolina, to be approved of by such mayor which said bond shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed. The board of aldermen, or other governing body, shall have full power and authority to revoke such license and sue for forfeiture of the bond upon a breach thereof. Any person who may obtain a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied, may maintain an action in his own name upon the said bond of said pawnbroker in any court having jurisdiction of the amount demanded to satisfy said judgment.

3. Every pawnbroker shall keep a book in which shall be legibly written, at the time of the loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on said loan and the name and residence of the person pawning or pledging the said goods, articles or things. And every such pawnbroker shall at the time of each loan deliver to the person pawning or pledging any goods, articles or things a ticket or memorandum or note signed by him containing the substance of the entry required to be made by him in his book as aforesaid, and a copy of the said ticket, memorandum or note so given to the person pawning or pledging any goods, articles or things of value, shall be filed within forty-eight hours in the office of the chief of police of the city or town issuing the license to such pawnbroker. The said tickets or memorandums so issued shall be numbered consecutively and dated the day issued.

4. No pawnbroker shall sell any pawn or pledge until the same shall have remained sixty days in his possession after the maturity of the debt for which the property was pledged. And no pawnbroker shall advertise or sell at his place of business as unredeemed pledges any articles of property other than those received by him as pawns or pledges in the usual course of his business at the place where he is licensed to do business.

5. The provisions of this section shall not be construed as to relieve any person from the penalty incurred under the laws against usuary in this State. Any person, firm or corporation violating the provisions of this act shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court. (1915, c. 198.)

#### **4985. Auditor transmits list of pensioners to clerk.**

The auditor shall, as soon as the same is ascertained, transmit to the

clerks of the superior courts of the several counties a correct list of the pensioners, with their postoffices, as allowed by the state board of pensions. He may have printed once in each two years, but not oftener, a list of the pensioners on the pension roll, providing on each biennial published list space for correcting the list for the years in which the list is not printed. (1907, c. 674, s. 15; 1915, c. 62, s. 4.)

#### 4993. Other disabilities from wounds and injuries; widows.

There shall be paid out of the treasury of the state, on the warrant of the auditor to every person who has been for twelve months immediately preceding his application for pension a *bona fide* resident of the state, and who is incapacitated for manual labor and was a soldier or a sailor in the service of the confederate states of America, during the war between the states, and to the widow of any deceased officer, soldier or sailor who was in the service of the confederate states of America during the war between the states (provided such widow was married to such sailor or soldier before the first day of April, one thousand eight hundred and sixty-five, and she has married again, is a widow at the date of her application), The following sums annually according to the degree of disability ascertained by the following grades, viz.: First, to such as have received a wound as renders them totally incompetent to perform manual labor in the ordinary vocations of life, sixty dollars; second, to such as have lost a leg above the knee or an arm above the elbow, forty-five dollars; third, to such as have lost a foot or a leg below the knee, or a hand or arm below the elbow, or have a leg or arm utterly useless by reason of a wound or permanent injury, thirty-five dollars; fourth, to such as have lost an eye, and to the widows and all other soldiers who are now disabled from any cause to perform manual labor, twenty dollars: *Provided*, that any soldier or sailor who served ninety days in the confederate army and was honorably discharged and who has been totally paralyzed so as to become unable to perform manual labor of any kind, shall be placed on the pension roll in the second class: *Provided, further*, that said total incapacity shall be ascertained upon the examination of the applicant by and the written certificate of two reputable physicians practicing in the county in which the applicant resides. (1913, c. 187; 1915, c. 94.)

For notes on this section see Supplement 1913.

#### 4993a.

For notes on this section see Supplement 1913.

#### 4993c. Widows to receive pensions for one year after husband's death.

All pensions due to confederate soldiers shall be paid to their widows for a period of one year after the death of any such pensioner. *Provided*, the amount shall not exceed a widow's pension as prescribed by law. (1913, c. 128; 1915, c. 212.)

For notes on this section see Supplement 1913.



**4993d. Advancing certain Confederate widows on the pension roll.**

All blind Confederate widows who are now on the pension roll will be advanced to first class and will get same pay as is now given that class. (1915, c. 29.)

**5002b.**

For notes on this section see Supplement 1913.

**5005a.**

Amended, see Supplement 1913.

**5006.**

Amended, see Supplement 1913.

**5012a.**

For notes on this section see Supplement 1913.

**5012b.**

For notes on this section see Supplement 1913.

**5038.**

Amended, see Supplement 1913.

**5045a.**

For notes on this section see Supplement 1913.

**5067c.**

For notes on this section see Supplement 1913.

**5067d.**

For notes on this section see Supplement 1913.

**5067e.**

For notes on this section see Supplement 1913.

**5067f.**

For notes on this section see Supplement 1913.

**5092a.**

For notes on this section see Supplement 1913.

**5093.**

For notes on this section see Supplement 1913.

**5095.**

For notes on this section see Supplement 1913.

**5101.**

Amended, see Supplement 1913.

**5101a. Printing in certain departments.**

1. The North Carolina Agricultural Experiment Station be and it is hereby allowed to have the bulletins of the said department printed as other State printing and paid for out of the general fund to an amount

not to exceed two thousand five hundred dollars for each biennial period, the first biennial period ending on the first day of December, one thousand nine hundred and sixteen.

2. The Bureau of Vital Statistics of the State Board of Health be and it is hereby allowed its printing in such amount as is necessary in a sum not to exceed four thousand dollars for each biennial period, the first biennial period ending on the first day of December, one thousand nine hundred and sixteen.

3. The Department of the Superintendent of Public Instruction be and it is hereby allowed to expend for the necessary printing of its department a sum not to exceed eighteen thousand dollars for each biennial period, the first biennial period ending on the first day of December one thousand nine hundred and sixteen. (1915, c. 209. In effect March 1, 1915.)

### 5103a. Curtailment of expenditures for public printing.

Whenever, in the judgment of the Commissioner of Labor and Printing any requisition received by him from any state officer or department goes beyond the intent of the laws allowing printing, he may decline to allow the expenditure required to cover the cost of the printing or other similar matter required: *Provided*, that the officer or department making such requisition shall have the right of appeal from the decision of the Commissioner of Labor and Printing to the printing commission, whose finding shall be final: *Provided, further*, that a full account of such appeal shall be filed with the Joint Committee on Printing of the General Assembly at the succeeding session. (1915, c. 61. In effect March 1, 1915.)

### 5104a. Printing reports of institutions.

The following institutions, and all others sustained by appropriations from the state treasury be and they are required to furnish to the Commissioner of Labor and Printing not later than December fifteenth of each biennial period a duplicate of the report required to be furnished to the governor for his use and for the records of his office, for inclusion in the public documents. Not to exceed two hundred copies of such report may be furnished to the executive head of such institutions; The University of North Carolina, Chapel Hill; The North Carolina College of Agriculture and Mechanic Arts, Raleigh; The North Carolina Agricultural Experiment Station, Raleigh; The Agricultural and Mechanical College for the Colored Race, Greensboro; The North Carolina Institution for the Blind and the Deaf, Raleigh; The Normal Department of Cullowhee High School, Painter; The Appalachian Training School, Boone; The North Carolina School for the Deaf and Dumb, Morganton; The Central Hospital, Raleigh; The State Hospital, Morganton; The State Hospital (colored), Goldsboro; The State Prison, Raleigh; The Eastern Carolina Teachers' Training School, Greenville; The State



Board of Health, including the Bureau of Vital Statistics, the State Laboratory of Hygiene and the State Sanatorium for the Treatment of Tuberculosis, Montrose: *Provided*, that these reports shall carry only such matters as are essential to a proper understanding of the work and purposes of the institution, together with a financial statement covering the previous biennial period ending December first. (1915, c. 62.)

**5105b. Publication of farm bulletins of experiment station.**

(Repealed, 1915, c. 62, s. 2.)

**5105d.**

Owing to the fact that the Revenue Act is largely rewritten by every Legislature, it has been deemed inadvisable to print the new act here. It is chapter 285 of the Laws of 1915.

For additional notes on this section see Supplement 1913.

3. This section does not apply where the Legislature has given special authority to levy a tax for the payment of principal and interest of the bonds issued for water works purposes. *Bain v. Goldsboro*, 164 N. C. 102, 80 S. E. 256.

5. This section repeals exemption from taxation of the charter of the Southern Assembly, Chapter 419, Laws 1909. *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18.

The principles laid down in *Davis v. Salisbury*, 161 N. C. 56 (see note to this subsection in Gregory's Supplement 1913), have been affirmed in *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18.

All previous special exemptions are repealed by this act. *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18.

44. Where separate articles are shipped into this State in larger packages, they are not the subject of interstate commerce after the bulk has been broken here for distribution; and a peddler's tax imposed upon a person thus selling these separate articles which have in this manner been shipped to him from beyond the State is not an interference with the commerce clause of the Federal Constitution. *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168.

Drummers selling by wholesale do not come within the definition of the word peddler. *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168.

In *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168, the Court declined to pass upon the question whether the exemption of poor and infirm persons, Confederate soldiers and blind persons from the taxes described by this section, are constitutional, being of the opinion that they are not so intimately connected with the other part of the statute that they determine the validity of the whole.

The exemptions from taxation under this section of those who sell books, etc., those who exchange woolen goods for wool, and drummers, are valid, as a reasonable exercise of the power of classification. *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168.

The difference between peddlers on foot, and with vehicle, peddlers of proprietary medicines with free attractions and those without, furnish reasonable grounds for classifications made in this section. *Smith v. Wilkins*, 164 N. C. 135, 80 S. E. 168.

**5105e.**

Owing to the fact that the Machinery Act is practically rewritten by every Legislature, it has been deemed inexpedient to print the new act here. It is chapter 286 of the Laws of 1915.

For additional notes on this section see Supplement 1913.

72. The principles laid down in *Davis v. Salisbury*, 161 N. C. 56 (see notes to this section in Gregory's Supplement, 1913), have been affirmed in *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18.

In *Southern Assembly v. Palmer*, 166 N. C. 75, 82 S. E. 18, it was held that the property of the Assembly was not exempt from taxation under this section.

83. The words "county funds" at the end of this section do not include school funds; and the commissioners have no right to charge against the school taxes a proportionate part of the expense for making out tax lists. *Board of Education v. Commissioners*, 167 N. C. 114, 83 S. E. 257.

### **5308a. Locating the Pee Dee River.**

WHEREAS, there seems to be some confusion as to the proper name of the river that is the boundary line between Stanly and Anson counties on the east and Montgomery and Richmond counties on the west, which river has heretofore from the beginning of our State's history been called the Pee Dee, but in recent maps appears as the Yadkin River; now, therefore,

*The General Assembly of North Carolina do enact:*

1. That the river which is the eastern boundary of Stanly and Anson and the western boundary of Montgomery and Richmond, shall be known from its confluence with the Uwharrie and the Yadkin to the point at which it enters the State of South Carolina as the Pee Dee River. (1915, c. 123. In effect March 8, 1915.)

### **5314a(6). Directors allowed expenses.**

The directors provided for in the foregoing act shall be entitled to their actual expenses incurred in attending the meetings of said board of directors since their appointment, and also in attending future meetings of said board of directors, the same to be paid out of the funds of the said Confederate Woman's Home. (1913, c. 62, s. 6; 1915, c. 206.)

### **5315.**

Amended, see Supplement 1913.

### **5319b. Acquirement by the State of state forests.**

1. The governor of the State is authorized upon recommendation of the geological board to accept gifts of land to the State, the same to be held, protected and administered by said board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Geological Board shall have the power to purchase lands in the name of the State suitable chiefly for the production of timber, as State forests, for experimental, demonstration educational, park and protection purposes, using for such purposes any special appropriations or funds available. The Attorney-General of the



State is directed to see that all deeds to the State of land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made. Said State forests shall be subject to county taxes assessed on the same basis as are private lands, to be paid out of moneys in the State Treasury not otherwise appropriated.

2. All moneys received from the sale of wood, timber, minerals or other products from the State forests shall be paid into the State Treasury and to the credit of the geological board; and such moneys shall be expended carrying out the purposes of this act and of forestry in general, under the direction of the geological board.

2½. Nothing in this act shall operate or be construed as authority for the payment of any money out of the State Treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly. (1915, c. 253.)

**5319c(1). To protect the forests of the State from fire; action by Geological Board.**

The State Geological board may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State.

**(2). Township and district forest wardens appointed.**

The forester of the State Geological and Economic Survey who shall be called State Forester, and shall be ex-officio State Forest Warden, may appoint, with the approval of the Geological Board, one township forest warden and one or more district forest wardens in each township of the State in which the amount of forest land and the risks from forest fires shall, in his judgment, make it advisable and necessary.

**(3). Supervision of township and district forest wardens.**

The State Forester, as State Forest Warden, shall have supervision of township and district forest wardens, shall instruct them in their duties, issue such regulations and instructions to the township and district forest wardens as he may deem necessary for the purposes of this act, and cause violations of the laws regarding forest fires to be prosecuted.

**(4). Measures for controlling fires.**

Forest wardens shall have charge of measures for controlling forest fires; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places, copies of the forest fire laws and warnings against fires, which shall be supplied by the State Forester; shall patrol during dry and dangerous seasons under the direction of the State Forester, and shall perform such other acts and duties as shall be considered necessary by the State Forester for the protection of the forests

from fire. The township forest warden of the township in which a fire occurs shall within ten days make such a report thereof to the State Forester as may be prescribed by him. The township forest warden of the township in which a fire occurs shall within ten days make such a report thereof to the State Forester as may be prescribed by him. Each district forest warden shall promptly report to township wardens any fire in his district.

**(5). Interference with sign, poster, or warning.**

Any person who shall maliciously or wilfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the State Forester, under the provisions of this act or any other act which may be passed for the purpose of protecting the forests in this State from fire, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or imprisoned not exceeding thirty days.

**(6). Duties of wardens; arrests; fire patrols; power of entry.**

Forest wardens shall prevent and extinguish forest fires in their respective townships and enforce all statutes of this State now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest warden may arrest, without a warrant, any person or persons taken by him in the act of violating any of the said laws for the protection of forests and woodlands, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay, to hear, try and determine the matter. During a season of drouth the State Forester may establish a fire patrol in any township, and in case of fire in or threatening any forest or woodland the township or district forest warden shall attend forthwith and use all necessary means to confine and extinguish such fire. The said forest warden may summon any male resident of the township between the ages of eighteen and forty-five years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be liable to a penalty of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest warden or person summoned by him for crossing or working upon lands of another in connection with his duties as forest warden.

**(7). Compensation of forest wardens.**

Forest wardens shall receive compensation from the geological board at a rate of not to exceed twenty cents per hour for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation or food supplies incurred in fighting or es-



tinguishing any fire, according to an itemized statement to be rendered the State Forester every month, and approved by him. Forest wardens shall render to the State Forester a statement of the services rendered by the men employed by them or their district wardens, as provided in this act, within one month of the date of service, which said bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the State Forester. All accounts of the forest wardens must be duly sworn to before a justice of the peace, notary public or other officer qualified to witness such papers within the county in which the expenses were incurred. If said bill be duly approved by the State Forester, it shall be paid by direction of the geological board out of the funds hereinafter provided for.

**(8). Regulation of burning of grass, brush, or woodland.**

If any person shall intentionally set fire to any grass land, brush land, or woodland, except it be his own property, or in that case without first giving notice to all persons owning or in charge of lands adjoining the land intended to be fired, and also taking care to watch such fire while burning and taking effectual care to extinguish such fire before it shall reach any lands near to or adjoining the lands so fired, he shall for every such offense be guilty of a misdemeanor and shall be fined not less than ten dollars, nor more than fifty, or imprisoned not exceeding thirty days. This shall not prevent action for damages sustained by the owner of any property from such fires.

**(9). Regulation of camp fires.**

Any wagoner, hunter, camper, or other person who shall kindle a camp fire or shall authorize another to kindle such fire, unless all combustible material for the space of ten feet surrounding the place where said fire is kindled has been removed, or shall leave a camp fire without fully extinguishing it, or who shall accidentally or negligently by the use of any torch, gun, match, or other instrumentality, or in any manner whatever start any fire upon any grass land, brush land or woodland without fully extinguishing the same, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars, nor more than fifty dollars, or imprisoned not exceeding thirty days.

**(10). Watchmen to be provided for fires set.**

All persons, firms, or corporations, who shall burn any tar, kiln or pit of charcoal, or set fire to or burn any brush, grass, or other material, whereby any property may be endangered or destroyed shall keep and maintain a careful and competent watchman in charge of said kiln, pit, brush, or other material while burning. Any person, firm, or corporation violating the provisions of this section shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or imprisoned not ex-

ceeding thirty days. Fire escaping from such kiln, pit, brush, or other material while burning shall be *prima facie* evidence of neglect of these provisions.

**(11). Woodland defined.**

For the purposes of this act, woodland is taken to include all forest areas, both timber and cut-over land, and all second growth stands on areas that have at one time been cultivated. (1915, c. 243.)

**5319d. Arbor Day for North Carolina.**

1. The Friday following the first day of November in each year shall be known as Arbor Day, to be appropriately observed by the public schools of the State.

2. The governor is herewith authorized to make proclamation setting forth the provisions of this act and recommending that Arbor Day be appropriately observed by the school children of the State, in order that they may be brought up to appreciate the true value of trees and forests to their State.

3. It shall be the duty of the State superintendent of public instruction to take the matter of the observance of Arbor Day by the public schools of the State, under his general supervision, to issue each year a program for its observance to cover such part of the day as he may prescribe, and to transmit suitable instructions to the county school authorities under his charge for an appropriate observance of Arbor Day. (1915, c. 51.)

**5328(3).**

Under this section the Governor, alone, may supply vacancies on the board mentioned in Section 4547. *Salisbury v. Croom*, 167 N. C. 223, 83 S. E. 354.

**5334.**

For notes on this section see Supplement 1913.

**5335.**

For notes on this section see Supplement 1913.

**5337.**

For notes on this section see Supplement 1913.

**5349.**

Amended, see Supplement 1913.

**5371.**

Ch. 168, Laws 1915 (see Sec. 5371a) in its title purports to amend this section, but this section is not mentioned in the body of the act.

**5371a. Prescribing the duties of the State treasurer, and relating to the State treasurer's bond.**

1. The bank or banks in which any money is deposited by the State



Treasurer, or the Insurance Commissioner, or by any State department or by any State institution, shall be required to pay interest on monthly balances on said money at the rate of three per centum per annum. No such depository bank shall make any charge for exchange, or for the collection of the Treasurer's checks, or for the transmission of any funds which may come into his hands as State Treasurer. The interest collected on the bank balances from time to time shall be paid into the State's general fund.

2. The State Treasurer-elect, before qualifying, shall file with the Secretary of State a bond in some reliable company, or companies, in the sum of two hundred and fifty thousand dollars, the premium on which bond shall be paid out of the general State funds; which said bond, before accepted, shall be approved by the Speaker of the House of Representatives and the President of the Senate.

3. Subject to the approval of the Governor and Council of State, the State Treasurer shall be authorized to make short term notes for temporary emergencies, but must only be made, to provide for appropriations already made by the General Assembly. (1915, c. 168.)

**5380.**

For notes on this section see Supplement 1913.

**5390.**

*Quære.*—Does this section authorize the infliction of flogging as a part of prison discipline? State v. Nipper, 166 N. C. 272, 81 S. E. 164.

**5402.**

Amended, see Supplement 1913.

**5405a. Religious instruction for prisoners at the Caledonia Farm.**

1. The board of directors of the State Penitentiary is hereby authorized, empowered and directed in order to provide religious worship for the prisoners confined in the State's prison, known as the Caledonia Farm, to employ a resident minister of the gospel and to provide for his residence and support in such manner as the board may determine.

2. It shall be the duty of said resident minister of the gospel to render religious services to the said prisoners in accordance with such rules and regulations as the board of directors may prescribe. (1915, c. 125.)

**5414.**

Amended, see Supplement 1913.

**5416a.**

For notes on this section see Supplement 1913.

**5416f.**

For notes on this section see Supplement 1913.

**5425a. Employment of colored nurses in hospitals.**

1. In every public and private hospital, sanatorium, and institution

in North Carolina where colored patients are admitted for treatment and where nurses are employed it shall be mandatory upon the management of every such hospital, sanatorium and institution to employ colored nurses to care for and wait upon said colored patients.

2. Every person, firm or corporation violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined the sum of fifty dollars for each and every offense. (1915, c. 284. In effect March 9, 1915.)

**5437.**

Amended, see Supplement 1913.

**5438a.**

For notes on this section see Supplement 1913.

**5438b(4). Local registrars; deputy registrars; subregistrars.**

Within ninety days after the taking effect of this act, or as soon thereafter as possible, the chairman of every board of county commissioners in the State of North Carolina shall appoint a local registrar of vital statistics for each township in his county, and the mayor of every incorporated town or city in the state of North Carolina shall appoint a local registrar of vital statistics for his town or city, and the chairman of the boards of county commissioners and the mayors of the cities or towns shall notify the state registrar in writing, of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year in which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause: *Provided*, that in cities where health officers or other officials are, in the judgment of the state board of health, conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this act, such officials may be appointed as registrars in and for such cities and shall be subject to the rules and regulations of the state registrar, and to all the provisions of this act. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by a local registrar appointed by the same official who appointed the local registrar whose retirement creates the vacancy. Any chairman of a board of county commissioners or mayor of a city or town who appoints a local registrar to fill a vacancy in the office of local registrar shall notify the state registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the chairman of the board of county commissioners for the township local registration office, and by the mayor of the city or town for the town or city registration office. Each local registrar shall be a bona fide resident of the township, city



or precinct for which they are appointed and that removal from said township, city or precinct shall terminate said office.

Any local registrar who, in the judgment of the secretary of the state board of health, fails or neglects to discharge efficiently the duties of his office as laid down in this act, or who fails to make prompt and complete returns of all births and deaths, as required thereby, shall be forthwith removed from his office by the secretary of the state board of health and such other penalties may be imposed as are provided under section twenty-two of this act.

Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it may appear necessary for the convenience of the people in any rural district, the local registrar is hereby authorized, with the approval of the state registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each sub-registrar shall note on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: *Provided*, that each sub-registrar shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this act or the rules and regulations of the state registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; 1915, c. 20.)

#### (5). Burial and removal permits.

The body of any person whose death occurs in this state, or which shall be found dead therein, shall not be interned, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for a burial, removal or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided: *Provided*, that when a dead body is transported into a registration district in North Carolina for burial, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit. He shall note upon the face

of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; and no local registrar shall receive any fee for the issuance of burial or removal permits under this act other than the compensation provided in section twenty. (1913, c. 109, s. 5; 1915, c. 164.)

**(13). Certificates of births; form; by whom filed.**

Within five days after the date of each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the state board of health with a view of procuring a full and accurate report with respect to each item of information enumerated in section fourteen of this act.

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician midwife or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife or person acting as midwife, in attendance upon the birth it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information contemplated in section fourteen of this act, it shall then be the duty of the local registrar to secure from the person so reporting, or from any other person having the required knowledge such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto, to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said section fourteen, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar. (1913, c. 109, s. 13; 1915, c. 85.)

**(18). Duties of local registrar; of registers of deeds.**

Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the



burial or removal permit until such defects are corrected. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker *Provided*, that in case the death occurred from some disease which is held by the state board of health to be infectious, contagious or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the state board of health. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the state registrar, which record book the local registrar shall deposit with the register of deeds of the county not later than the fifteenth of January each year. And the register of deeds shall make and keep an index [the form of which shall be] of the births and deaths that have occurred in the county, and these records shall be open at all times to official inspection. And he shall, on the fifth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month the local registrar shall on the fifth day of the following month, report that fact to the state registrar, on a card provided for such purpose. (1913, c. 109, s. 18; 1915, cc. 85, 164.)

The words enclosed in brackets in line 30 of this section were inserted after certain other words were stricken out. They are meaningless as they stand.

#### (19). Pay of local registrars.

Each local registrar shall be paid the sum of twenty-five cents for each birth certificate and each death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the state registrar, as required by this act. And in case no births or deaths were registered during any month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this act. The compensation of local registrars for service required of them by this act shall be paid by the county treasurers for registration work outside of incorporated municipalities, and by the town or city treasurer for registration work in incorporated municipalities. The state registrar shall certify every six months to the treasurers of

5438b(23) AMENDMENTS AND NOTES TO REVISAL

the several counties and incorporated municipalities the number of births and deaths properly registered, with the names of the local registrars and the amount due each at the rates fixed herein: *Provided*, that the chairman of the board of county commissioners of the several counties may have the right to make such agreements with the several local registrars and subregistrars as may be agreed upon between said chairman and the local registrars or subregistrars as to the compensation to be paid local registrars or subregistrars. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15; 1915, c. 85.)

**(23). Appropriation.**

For the purposes of the thorough execution of this act the sum of ten thousand dollars, or as much thereof as may be necessary, is hereby annually appropriated to be paid by the state auditor on requisition signed by the president and secretary of the state board of health. (1913, c. 109, s. 23; 1915, c. 62.)

**5439. Number and boundaries of wreck districts.**

The counties of Currituck, Dare, Hyde, Carteret, Onslow, Brunswick and New Hanover are hereby divided into the following wreck districts, namely:

*Currituck*.—The first to extend from the Virginia state line to Judy's cove; the second to extend from Judy's cove to Josephus Baum's fish-house; the third to extend from Josephus Baum's fish-house to the county line of Dare.

*Dare*.—The first to extend from the county line of Currituck to the north point of Oregon inlet; the second to extend from the north point of Oregon inlet to the south point of New inlet; the third to extend from south point of New inlet to the patrol house between Gull Shoal and Little Kennakeet Life-Saving Stations; the fourth to extend from the last named patrol house to the patrol house between Big Kennakeet and Cape Hatteras Life-Saving Stations; the fifth to extend from the last named patrol house to Creed's Hill Life-Saving Stations; sixth to extend from Creed's Hill Life-Saving Stations to the county line of Hyde county.

*Hyde*.—The county of Hyde shall constitute one wreck district, which shall extend from the Dare county line to the Carteret county line.

*Carteret*.—The first from the Hyde county line to Core Banks Life-Saving Station; the second from Core Banks Life-Saving Station to Old Topsail inlet; the third from Old Topsail inlet to the Onslow county line.

*Onslow*.—The first from Bogue inlet to New River inlet; the second from New River inlet to the New Hanover county line.

*New Hanover and Brunswick*.—To extend from the Onslow county line to the South Carolina line. (1915, c. 42.)

**5453.**

For notes on this section see Supplement 1913.

**5454.**

For notes on this section see Supplement 1913.



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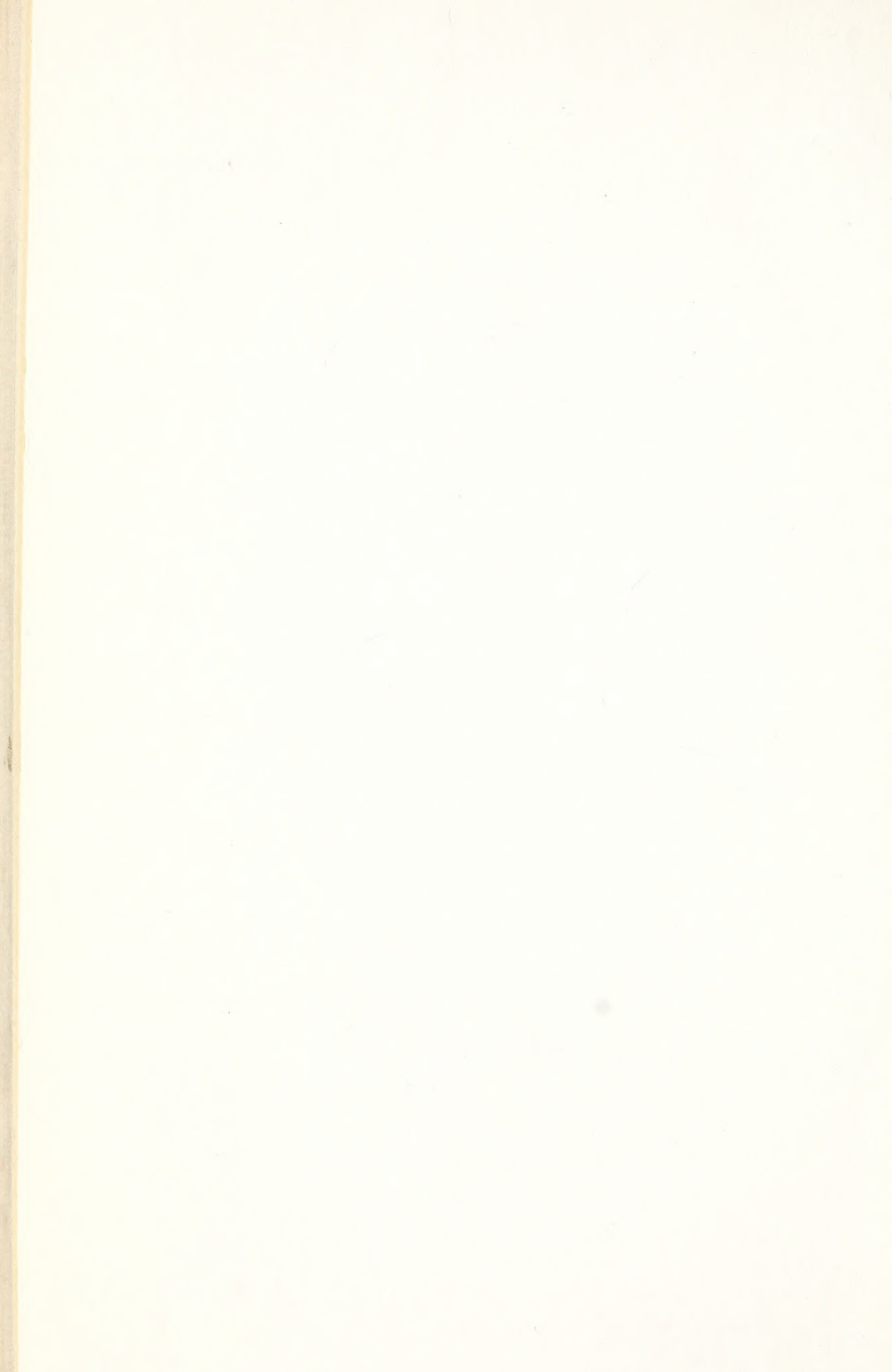
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